

**EXHIBIT A**

STATE OF NEW YORK: COUNTY OF ERIE

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JAMES KISTNER,

*Claimant,*

-against-

THE CITY OF BUFFALO,

*Respondent.*

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MAR 31 2017 NOTICE OF CLAIM

PLEASE TAKE NOTICE that the Claimant, James Kistner, hereby files this notice of claim with the City of Buffalo pursuant to General Municipal Law Section 50-e.

STATE OF NEW YORK )  
COUNTY OF ERIE ) ss.:  
CITY OF BUFFALO )

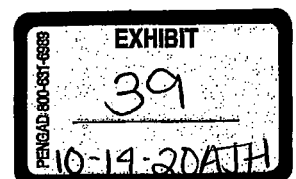
James Kistner, residing at 33 Schmarbeck Ave., Buffalo, New York 14212, being duly sworn, deposes and states:

*Name and post-office address of the claimant:* James Kistner, 33 Schmarbeck Ave., Buffalo, New York, 14212.

*Name and post-office address of claimant's attorney:* James Ostrowski, 63 Newport Ave., Buffalo, New York, 14216 (716) 435-8918.

*The nature of the claim:* The claim is for vehicular negligence or assault, false arrest, assault, battery, and malicious prosecution against the Claimant under state and federal law (42 USC 1983) by the City of Buffalo and the following City employees acting within the scope of their employment and under color of state law: Lauren McDermott, Jenny Velez, Karl Schulz, Kyle Moriarty and "John Doe."

SCANNED



The respondent's employees initiated false charges against the claimant with malice, including criminal mischief in the third degree (PL 145.05(2)) and disorderly conduct (PL 240.20(3)). The criminal mischief charge was first reduced to a misdemeanor and then dismissed on the merits on March 24, 2017 in Buffalo City Court by Judge James McLeod. The disorderly conduct charge is pending. The two accusatory instruments are attached hereto as Exhibit "A".

*The time when, the place where and the manner in which the claim arose:* On January 1, 2017, at about 11:00 a.m., the aforementioned officers responded to a call for assistance concerning a tenant issue at 33 Schmarbeck Ave., owned by the claimant. When claimant went out on the street to speak with the officers about an issue involving his building and his tenant, the car driven by Officers McDermott and Velez drove toward the claimant who was in plain sight and struck the claimant, causing, on information and belief, a possible serious injury. Claimant continues to seek treatment in that regard.

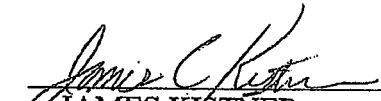
The officers then arrested the claimant, falsely alleging that he intentionally struck and damaged the vehicle. He was handcuffed and forcibly taken into a police car, then transported to Erie County Medical Center (ECMC), allegedly for a forensic examination. After being detained at ECMC for about four hours, and prevented from speaking to his attorney who came to the hospital, he was taken to Central Booking and charged as noted above. He was at Central Booking for about one hour. He was then forcibly taken back to ECMC where he remained for about two hours. He was then released with an appearance ticket and ordered to appear in Buffalo City Court.

Claimant was forced to appear in City Court many times and expend funds for an attorney. His attorney, James Ostrowski, provided a videotape of the arrest to the District

Attorney and the criminal mischief charge was dismissed on the merits on motion of the District Attorney. The claimant has a motion to dismiss the disorderly conduct charge pending.

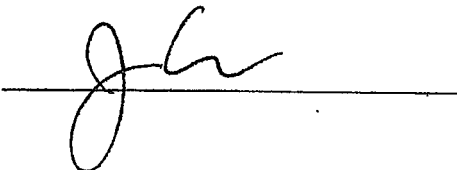
*The items of damage or injuries claimed to have been sustained:* Claimant's damages and injuries include: loss of liberty due to the arrest and prosecution, confinement and incarceration, pain and suffering, injuries from handcuffing, anxiety, humiliation, loss of reputation, possible serious injuries from the vehicle collision, attorneys' fees and other out of pocket expenses. The total amount claimed will be supplied upon demand.

Dated: March 31, 2017  
Buffalo, New York

  
JAMES KISTNER

JAMES OSTROWSKI  
Attorney for Claimant  
63 Newport Ave.  
Buffalo, New York 14216  
(716) 435-8918  
jameso@apollo3.com

SWORN TO BEFORE ME THIS  
31<sup>st</sup> DAY OF MARCH, 2017  
JAMES OSTROWSKI  
Notary Public-State of New York  
Qualified in Erie County  
Commission expires 7/5/2019



## EXHIBIT B

JAMES C. KISTNER

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ERIE

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IN THE MATTER OF THE CLAIM  
OF

JAMES KISTNER,  
Claimant,  
- against -  
THE CITY OF BUFFALO,  
Respondent.  
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Examination under oath of JAMES C. KISTNER,  
Claimant, taken pursuant to Section 50-h of the  
General Municipal Law, in the Office of Buffalo  
Corporation Counsel, 1137 City Hall, Buffalo,  
New York, on June 27, 2017, commencing at  
11:08 a.m., before ANNE T. BARONE, RPR, Notary  
Public.

JACK W. HUNT & ASSOCIATES, INC.

3

1 allege caused physical injuries to you.

2 What -- do you recall the date that that  
3 incident occurred on?

4 A. January 1st.

5 Q. I'm going to ask you some questions  
6 about your background, as well as regarding that  
7 incident.

8 Have you ever testified before?

9 A. In a civil case?

10 Q. Any type of sworn testimony.

11 A. Yeah.

12 Q. In what context?

13 A. Criminal trial.

14 Q. Have you ever given deposition  
15 testimony before?

16 A. No.

17 Q. It's going to be similar, but let me  
18 just remind you of the ground rules.

19 We have a court reporter here who's taking  
20 down everything that's being said. She can only  
21 take down verbal answers. No head nods, shoulder  
22 shrugs. So I'm going to ask that your responses to  
23 my questions be verbal.

2

1 APPEARANCES: JAMES M. OSTROWSKI, ESQ.,  
2 63 Newport Avenue,  
3 Buffalo, New York 14216,  
4 (716) 435-8918,  
5 jameso@apollo3.com,  
6 Appearing for the Claimant.

7 TIMOTHY A. BALL, ESQ.,  
8 Corporation Counsel,  
9 By MAEVE E. HUGGINS, ESQ.,  
10 Assistant Corporation Counsel,  
11 1137 City Hall,  
12 Buffalo, New York 14202,  
13 (716) 851-4334,  
14 mhuggins@city-buffalo.com,  
15 Appearing for the Respondent,  
16 The City of Buffalo.

17 PRESENT: EARL KISTNER

18 JAMES C. KISTNER, 33 Schmarbeck,  
19 Buffalo, New York 14212, after being duly called  
20 and sworn, testified as follows:

21 EXAMINATION BY MS. HUGGINS:

22 Q. Nice to see you again. We met off the  
23 record last week. My name is Maeve Huggins. I'm  
an attorney for the City of Buffalo.

We're here today to discuss a notice of  
claim that you filed regarding an incident  
involving the Buffalo Police Department that you

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1 If I ask you a question and you begin to  
2 answer, I'm going to assume that you understood my  
3 question. If you don't, just let me know and I'll  
4 rephrase my question.

5 A. Okay.

6 Q. If at any point you need a break, let  
7 me know. If I've just posed a question, I'm going  
8 to ask that you answer the question before we take  
9 that break.

10 The court reporter can't take down when two  
11 people are speaking over each other, so I'm just  
12 going to ask that you give me the courtesy of  
13 allowing me to finish my question before you  
14 answer, and I'll extend the same courtesy to you.

15 I think that's it for ground rules. Do you  
16 understand and ready to proceed?

17 A. Yes.

18 Q. Before coming in here to testify today,  
19 have you taken any drugs or alcohol that would  
20 inhibit your ability to give truthful testimony  
21 within the last 24 hours?

22 A. No.

23 Q. Did you skip taking any medication

1 (Pages 1 to 4)

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<p style="text-align: right;">5</p> <p>1 that you should have been taking within those last</p> <p>2 24 hours?</p> <p>3 <b>A. No.</b></p> <p>4 Q. In preparation for your testimony</p> <p>5 today, did you review any documentation?</p> <p>6 Photographs? Video?</p> <p>7 <b>A. Within the last 24 hours, no.</b></p> <p>8 Q. Did you do any of that in preparation</p> <p>9 last week when we had originally scheduled this?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Did you look at anything at all knowing</p> <p>12 that you were going to give testimony today</p> <p>13 regarding this incident?</p> <p>14 <b>A. The best way to answer that is I</b></p> <p>15 <b>haven't reviewed the video of what happened -- I</b></p> <p>16 <b>haven't reviewed the video in probably a month.</b></p> <p>17 Q. Okay. And I should say on the record,</p> <p>18 last week, when we originally had scheduled this</p> <p>19 50-h, your attorney provided me a disc that</p> <p>20 contained four separate video files. It's my</p> <p>21 understanding that's what your attorney is in</p> <p>22 possession of.</p> <p>23 I'm going to ask -- because it's also my</p>	<p style="text-align: right;">7</p> <p>1 Q. What type of system was this video</p> <p>2 recorded on?</p> <p>3 <b>A. A Swann.</b></p> <p>4 Q. And forgive me. I don't know what that</p> <p>5 is. What is it?</p> <p>6 <b>A. It's a Swann DVR with eight cameras.</b></p> <p>7 Q. What location is that video system on?</p> <p>8 <b>A. It's at 37 Schmarbeck. It covers</b></p> <p>9 <b>41 Schmarbeck and 33 Schmarbeck.</b></p> <p>10 Q. Are those eight cameras --</p> <p>11 <b>A. They're spread out all over those</b></p> <p>12 <b>buildings.</b></p> <p>13 Q. So it covers those three addresses?</p> <p>14 <b>A. Yeah. Well, actually, it covers 24 as</b></p> <p>15 <b>well.</b></p> <p>16 Q. Do you own and control that system?</p> <p>17 <b>A. Rachel Glurich owns the system.</b></p> <p>18 Q. And who is Rachel to you?</p> <p>19 <b>A. We have three children in common.</b></p> <p>20 <b>She's my next-door neighbor.</b></p> <p>21 Q. Are you currently in a relationship?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. How long have you been together?</p>
<p style="text-align: right;">6</p> <p>1 understanding from prior testimony that video was</p> <p>2 recorded, I'm just going to ask that that video be</p> <p>3 preserved and that I have an opportunity to inspect</p> <p>4 the complete video, if anything else exists other</p> <p>5 than the four video files that I was already given.</p> <p>6 <b>A. Okay.</b></p> <p>7 Q. And I'll make that request through your</p> <p>8 attorney.</p> <p>9 Aside from conversations with your attorney --</p> <p>10 those, I don't want to know about -- have you</p> <p>11 discussed this incident with anyone else?</p> <p>12 <b>A. Friends and family, yes.</b></p> <p>13 Q. What friends and family?</p> <p>14 <b>A. My sisters.</b></p> <p>15 Q. What are their names?</p> <p>16 <b>A. Gweh Cassidy, Gail Malone. I'm going</b></p> <p>17 <b>to call him Mr. Gary. I don't know Gary's first</b></p> <p>18 <b>name, but he was the one that recovered the video</b></p> <p>19 <b>from the DVR. He's an IT guy.</b></p> <p>20 Q. Does he work for you?</p> <p>21 <b>A. He -- in this instance, yes. We gave</b></p> <p>22 <b>him \$150 to take the DVR and put it to disc because</b></p> <p>23 <b>we didn't know how to do it.</b></p>	<p style="text-align: right;">8</p> <p>1 <b>A. 12 years at least. Maybe longer. I'll</b></p> <p>2 <b>be in trouble if that's wrong.</b></p> <p>3 Q. So is Rachel the one that operates that</p> <p>4 camera system?</p> <p>5 <b>A. When you say operates, it kind of</b></p> <p>6 <b>operates itself. You just turn it on.</b></p> <p>7 Q. Like hit a button and it goes?</p> <p>8 <b>A. And then if something happens, then you</b></p> <p>9 <b>go to the machine and do the best you can to try to</b></p> <p>10 <b>say, okay, let me see what just happened down</b></p> <p>11 <b>there.</b></p> <p>12 Q. Does that system record over itself, or</p> <p>13 does it preserve the video?</p> <p>14 <b>A. Yeah, it records over -- it depends on</b></p> <p>15 <b>how you set it, but yeah, I'm pretty sure the way</b></p> <p>16 <b>we've been able to -- we're not expert IT people,</b></p> <p>17 <b>and the way it's been essentially set up is it</b></p> <p>18 <b>records over itself.</b></p> <p>19 <b>That's why we called Gary, this fellow, the</b></p> <p>20 <b>IT guy, and said, come over here and get the DVR</b></p> <p>21 <b>and make sure this gets preserved, because we're</b></p> <p>22 <b>afraid it's going to record over itself if we don't</b></p> <p>23 <b>do it quickly.</b></p>

2 (Pages 5 to 8)

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<p style="text-align: right;">25</p> <p>1 A. No.</p> <p>2 Q. Did you have breakfast --</p> <p>3 A. Yeah.</p> <p>4 Q. -- on January 1st?</p> <p>5 A. Yeah.</p> <p>6 Q. Do you recall what you had for</p> <p>7 breakfast?</p> <p>8 A. Some kind of eggs. Just regular fare.</p> <p>9 Eggs and bacon or something.</p> <p>10 Q. Did you skip taking any medication that</p> <p>11 you should have been taking on that day?</p> <p>12 A. No. I don't take any medication at</p> <p>13 all.</p> <p>14 Q. And I said drugs and alcohol. Did you</p> <p>15 take any prescription or other type of like</p> <p>16 nonillegal drugs that day?</p> <p>17 A. No. I don't take any drugs, legal or</p> <p>18 illegal. I haven't drank since 1999.</p> <p>19 Q. Well, what happened during this</p> <p>20 incident?</p> <p>21 A. Should I give a narrative?</p> <p>22 Q. Yeah. I wasn't there. That's why I'm</p> <p>23 asking you.</p>	<p style="text-align: right;">27</p> <p>1 Q. Okay. Had you ever seen that red van</p> <p>2 before?</p> <p>3 A. No.</p> <p>4 Q. What happened after you saw the van</p> <p>5 pull up?</p> <p>6 A. Well, first, I was concerned because</p> <p>7 he -- it was recently he had been staying at -- I</p> <p>8 want to say the Brothers of the Poor. It was a</p> <p>9 social service agency. He had stayed there from</p> <p>10 the 18th of December through about the 27th.</p> <p>11 And when I found out about it, I contacted</p> <p>12 them, and I said, why is he staying with you? He's</p> <p>13 got a subsidized apartment at 33 Schmarbeck. They</p> <p>14 didn't know.</p> <p>15 Q. How did you come to know he was staying</p> <p>16 there?</p> <p>17 A. He wasn't staying at 33. I've lived</p> <p>18 there for a decade. I can pretty well know when</p> <p>19 somebody's not there. And I inquired. I asked</p> <p>20 people. I said, where is Mike? They said, well, I</p> <p>21 think he's over at the Little Brothers of the Poor</p> <p>22 Friary or wherever he's at. I said, what's he</p> <p>23 doing there?</p>
<p style="text-align: right;">26</p> <p>1 A. Okay. All right. I'll give a narrative.</p> <p>2 We're upstairs eating. Earl was there. We</p> <p>3 were in Rachel's kitchen on the second floor. And</p> <p>4 we had the three boys in highchairs, and we were</p> <p>5 all eating.</p> <p>6 And I can't remember whether it was Earl or</p> <p>7 Rachel or me or somebody said, Mike's driving. And</p> <p>8 I looked outside, and Mike Wolfe, the tenant in the</p> <p>9 first floor at 33, had pulled up in a red van.</p> <p>10 And I said, are you sure -- whoever it was,</p> <p>11 I said, are you sure that's Mike who was driving?</p> <p>12 And they said, yeah. And I said, well, Mike ain't</p> <p>13 got a driver's license, and he don't own a van. So</p> <p>14 Mike's driving that van?</p> <p>15 Q. How do you know he doesn't have a</p> <p>16 driver's license?</p> <p>17 A. Because I had spoken to him probably</p> <p>18 three or four weeks previous to this about him</p> <p>19 cashing checks. He needed a place to cash checks.</p> <p>20 I said, well, don't you have ID or a driver's</p> <p>21 license or something? And he says, no.</p> <p>22 He explained to me he didn't have a driver's</p> <p>23 license.</p>	<p style="text-align: right;">28</p> <p>1 So I called them. They said, yeah. He's</p> <p>2 been here for ten days claiming he's homeless. So</p> <p>3 then I called the people that subsidize his rent,</p> <p>4 the Restoration. They said, we need to all get on</p> <p>5 the same page here.</p> <p>6 Q. Did you ever have any disputes with</p> <p>7 Mike about where he was living?</p> <p>8 A. The only problem I ever had with Mike</p> <p>9 was that he had -- he brought somebody else into</p> <p>10 the apartment, and under the terms of, you know,</p> <p>11 his tenancy there, it's not that kind of move.</p> <p>12 It's for him. If he wants somebody else to come</p> <p>13 in, we need to have an application filled out from</p> <p>14 them.</p> <p>15 Q. Like was he subletting it and getting a</p> <p>16 rent from it or just allowing someone to stay</p> <p>17 there?</p> <p>18 A. I don't know that deep of minutia. If</p> <p>19 he was using it as a resource and trying to profit</p> <p>20 from it, I don't know.</p> <p>21 But it had been growing and growing and</p> <p>22 growing out of hand, Mike's tenancy there, so we</p> <p>23 had given him a 30-day notice on December 30th,</p>

7 (Pages 25 to 28)



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<p style="text-align: right;">29</p> <p>1 after we had found out that he wasn't in the unit 2 and that he was staying over at the social service 3 agency and making these claims. 4 Q. Did that create any issues -- this 5 30-day notice create any issues between you and 6 Mike? 7 A. Nah, because we had talked, and I told 8 him: You know, you can't really do this here, you 9 know. 10 Q. All right. So what happened on 11 January 1st, when you saw that van? 12 A. I said, oh, well, I hope he doesn't 13 steal the appliances. Because we also furnish all 14 the appliances. The washer, the dryer the stove, 15 and the fringe. I said, just keep an eye on him, 16 and, you know, if he starts loading stuff into the 17 appliances -- he starts loading the appliances, 18 I'll call the cops. 19 Q. Who did you say that to? 20 A. I think Earl and Rachel. 21 Q. Okay. Did you have plans on January 1st? 22 Were you going to be home that day? 23 A. Yeah. No. I don't think we were going</p>	<p style="text-align: right;">31</p> <p>1 were there? 2 A. I think you have -- one of those video 3 files has that, their arrival. 4 The first police car I saw was in the center 5 of the street. That was the first one that 6 arrived. I looked at the video, so I know the 7 order in which they got there. 8 In the video you see the first policeman 9 pull up. He pulls up in the middle of the street. 10 And there were two men in that car. 11 Q. How were they dressed? 12 A. Like policemen. 13 Q. Were they wearing a uniform? 14 A. Yeah. Yeah. 15 Q. Without watching the video, did you -- 16 did you see these things yourself that day? 17 A. When -- when it was brought to my 18 attention, I don't know if it was Rachel or I might 19 have looked out the window and seen it myself, 20 but: The police are here. 21 So I looked outside, and the first thing I 22 thought when I saw the police were here is: Well, 23 Mike's got a stolen car. The red van is stolen.</p>
<p style="text-align: right;">30</p> <p>1 anywhere. I was just happy to have all the boys 2 home at once. 3 Q. What happened next? 4 A. I can't tell you how much time elapsed, 5 but I think it was less than a half hour, 6 a policeman pulled up right in front of 7 33 Schmarbeck. 8 Q. Did you ever call the police? 9 A. No. Well -- 10 Q. Do you have an idea who called the 11 police? 12 A. I suspect Mike called the police. Mike 13 Wolfe. 14 Q. On January 1st, was Mike Wolfe still 15 permitted to be in that first floor unit? 16 A. You mean had he been evicted or locked 17 out? No. 18 Q. Right. 19 A. He hadn't been evicted. He hadn't been 20 locked out. 21 Q. Okay. What type of -- and I'm sorry. 22 I might have just -- you might have just said this. 23 When the police got there, how many police officers</p>	<p style="text-align: right;">32</p> <p>1 Or he's been out driving recklessly with a borrowed 2 car and they've just found him. That was the first 3 thing I thought. 4 Q. What happened next? 5 A. The policeman in the driver's seat of 6 the car in the street got out of his car and he 7 walked over, and he got four feet away from Mike 8 and he talked to him. I don't know what they were 9 saying back and forth, but they had a conversation 10 for probably two minutes. 11 Q. Were you inside the house still at that 12 point? 13 A. Yeah. I was on the second floor 14 looking out the window watching. I was 60 feet 15 away watching. 16 Q. Okay. What happened next? 17 A. Either Earl or Rachel said: What's 18 going on down there? And I said, well, I don't 19 know, but I'm finishing breakfast before I go down 20 there to find out. 21 I'm not going to go rushing down there 22 because they might be arresting him. And I'm just 23 going to stand here for a minute and watch what</p>

8 (Pages 29 to 32)

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<p style="text-align: right;">33</p> <p>1 happens.</p> <p>2 So Mike was pointing up -- as he was talking</p> <p>3 to the policeman, was pointing up at the window</p> <p>4 where Rachel, me, and Earl were with the three kids</p> <p>5 in the kitchen watching this whole thing.</p> <p>6 Q. What happened next?</p> <p>7 A. The policeman walks back over and</p> <p>8 starts talking to the policeman who's still in the</p> <p>9 car in the passenger seat. I don't know what was</p> <p>10 said, but they were talking back and forth through</p> <p>11 the window.</p> <p>12 About that time another police car pulled up</p> <p>13 along the curb between the police car in the street</p> <p>14 and the curb, in a parking spot there, behind this</p> <p>15 red van that Mike had pulled up in.</p> <p>16 Q. Did there come a time when you left</p> <p>17 your house? Exited your house?</p> <p>18 A. Yeah. About this time when all these</p> <p>19 police cars were arriving, I said to Rachel or</p> <p>20 Earl, I said, we've got to go down there and find</p> <p>21 out what's going on.</p> <p>22 So we finished breakfast, and then I asked</p> <p>23 Earl to come down with me. I said, let's go find</p>	<p style="text-align: right;">35</p> <p>1 A. The one that was in the middle of the</p> <p>2 street.</p> <p>3 Q. Okay. What did they yell?</p> <p>4 A. He started yelling: I'm not talking to</p> <p>5 anybody. I'm not talking to anybody. Let's get</p> <p>6 out of here. Let's get out of here.</p> <p>7 He started telling the guy that was driving:</p> <p>8 We've got to leave. We're leaving now. We're</p> <p>9 leaving now. He said, I'm not talking to anybody.</p> <p>10 Let's go. Let's go.</p> <p>11 And he started yelling at the guy that was</p> <p>12 driving the car to let's go.</p> <p>13 Q. How close were you to the car at that</p> <p>14 point?</p> <p>15 A. Honest to God, I can't remember</p> <p>16 specifically. I know I was within 30 feet.</p> <p>17 Q. Sure. Do you know, were you in front</p> <p>18 of the car or on the side of the car?</p> <p>19 A. When he started yelling, I was in front</p> <p>20 of the car to the side.</p> <p>21 Q. Would that have been to the right or</p> <p>22 left side of the car?</p> <p>23 A. It would have been the driver's side.</p>
<p style="text-align: right;">34</p> <p>1 out what's going on.</p> <p>2 Q. What happened when you went outside?</p> <p>3 A. I walked out of the house, down the</p> <p>4 steps, out in the street, crossed the path of the</p> <p>5 police car that was in the front -- that was in the</p> <p>6 middle of the street, and went around like to his</p> <p>7 driver's door to talk to the driver who had been</p> <p>8 speaking to Mike.</p> <p>9 There was a secondary thing here too as well</p> <p>10 as maybe it's a stolen car. Mike's a mental health</p> <p>11 patient, so he could have been in crisis. There</p> <p>12 was no telling what was going on with him. So --</p> <p>13 and when that happens, you've got to go find out.</p> <p>14 Q. So when you walked up by the police in</p> <p>15 front of the car, did you say anything or identify</p> <p>16 yourself at all to the police?</p> <p>17 A. Yeah. As I was walking toward the</p> <p>18 police car off to the right, I said, I need to talk</p> <p>19 to you. Can I talk to you?</p> <p>20 Q. Did the police respond at all?</p> <p>21 A. The officer who was in the passenger</p> <p>22 side started yelling.</p> <p>23 Q. From which police car?</p>	<p style="text-align: right;">36</p> <p>1 I was off to the driver's side.</p> <p>2 Q. Okay. So you're standing there I</p> <p>3 presume facing the car?</p> <p>4 A. Yeah.</p> <p>5 Q. Were you walking towards the car still</p> <p>6 at that point?</p> <p>7 A. Yeah.</p> <p>8 Q. What happened next?</p> <p>9 A. The driver floored it, so I got out of</p> <p>10 the way and watched him drive by me. And the two</p> <p>11 women who were still in the police car by the</p> <p>12 curb --</p> <p>13 Q. The one behind the red van?</p> <p>14 A. Yeah. I looked over at them, and I</p> <p>15 said, can I talk to you?</p> <p>16 Q. Did they respond?</p> <p>17 A. She smiled at me.</p> <p>18 Q. Who's she?</p> <p>19 A. The driver.</p> <p>20 Q. What did she look like?</p> <p>21 A. You. I'm telling the truth. She</p> <p>22 looked just like you.</p> <p>23 Q. Did you ever come to learn her name?</p>

9 (Pages 33 to 36)

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<p style="text-align: right;">37</p> <p>1 A. I have to be quite frank, I can't put 2 their names with their faces. 3 Q. Okay. Did you ever come to learn the 4 names of the police officers that were involved 5 that day? 6 A. Later on, from the criminal charging 7 documents, I was able to find out who four of them 8 were. 9 Q. How many police officers were there 10 then total? 11 A. There were -- there were five 12 altogether. One didn't arrive until later. 13 Q. When this happened, the interaction you 14 had with the first car pulling away and then the 15 second one with the two females in it, there's a 16 total of four officers there at that point? 17 A. Yeah, there's four people there then. 18 Q. And you said there was -- I apologize 19 if you said this before -- there were two males and 20 two females? 21 A. Yeah. The first two were guys and the 22 second two were girls. 23 Q. Did they ever identify themselves to</p>	<p style="text-align: right;">39</p> <p>1 A. Because I thought she was going to talk 2 to me. 3 Q. Did she roll down her window? 4 A. No, but she acknowledged me, and I know 5 she heard me when I said, can I talk to you? And 6 she looked and went -- she smiled. I know that 7 won't go into the transcript, but she smiled, and I 8 took it as an acknowledgement that she was going to 9 talk to me. 10 Q. That somehow she was going to engage in 11 some sort of conversation with you? 12 A. Yeah. She was going to tell me why 13 they were there or what had gone on or what their 14 concern was at being at -- 15 Q. Did she say anything verbally to you? 16 A. Not before she hit me. 17 Q. What happened after you were struck? 18 Actually, let me ask you this: Where were 19 you struck on your body? 20 A. I think primarily my hands, because I 21 put my arms out. I'm not sure if my torso or my 22 legs ever came in contact with that car, but I -- 23 Q. Did you try to stop the car from</p>
<p style="text-align: right;">38</p> <p>1 you at all? 2 A. No. I don't think anybody said, my 3 name is Officer -- no, nobody ever did that. I 4 know nobody ever did that. 5 Q. Okay. After that female police officer 6 who was in the driver's seat smiled at you, what 7 happened next? 8 A. I said, can I talk to you? And she 9 looked over and smiled at me. I took two steps 10 toward the car, was crossing that lane of traffic 11 where the officer had just driven away, I was 12 crossing that, and when I looked up, the car was 13 coming at me. 14 Q. Did you move to get out of the way? 15 A. I put up my arms, and I closed my eyes, 16 and boom, it hit me. 17 Q. How long did that take? 18 What was the period of time between that 19 female driver looking at you and smiling and to you 20 getting hit? 21 A. The time it took me to cross that lane 22 of traffic. Three to five seconds, I guess. 23 Q. Why did you walk towards the car?</p>	<p style="text-align: right;">40</p> <p>1 moving? 2 A. No. I tried to like just -- that's 3 what I did. I just put my hands up and said, oh, 4 Christ. In my head I said, oh, Christ. I'm going 5 to get hit by a car. 6 Q. Yeah. The record should reflect you've 7 raised both of your hands with your palms and 8 fingers spread out -- 9 A. Yes. 10 Q. -- in front of you. 11 What happened after you were struck? 12 A. I remember opening my eyes and being on 13 my back on the ground. I remember looking down at 14 my feet, and my feet were between the back wheels 15 and the front wheels of her patrol car. 16 Q. Under her car? 17 A. Yes, my feet were under her car. How 18 deep under her car, I don't know. 19 Q. What type of car was this? 20 A. It wasn't like a car. It was more like 21 an SUV. 22 Q. Did it have any police markings on it? 23 A. Yeah. It was all marked. Yeah. They</p>

10 (Pages 37 to 40)

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<p style="text-align: right;">77</p> <p>1 down at Central Booking, and then they would give</p> <p>2 me -- give the staff the knowledge that I was</p> <p>3 leaving. But I really wasn't leaving. They had</p> <p>4 more planned.</p> <p>5 Q. At any point were you informed what</p> <p>6 charges were being pressed?</p> <p>7 A. The first time I found out what I was</p> <p>8 being charged with formally was when I was handed</p> <p>9 the appearance ticket.</p> <p>10 Q. You were still in Central Booking at</p> <p>11 that point?</p> <p>12 A. Yeah.</p> <p>13 Q. Were you ever placed in a cell?</p> <p>14 A. Yeah. See, I came in, I sat on a bench</p> <p>15 in a hallway with like a bank teller window, and</p> <p>16 then I was taken down the hallway and the pictures</p> <p>17 and the strip search, and then I was brought back.</p> <p>18 And there was a cell off to the side. I</p> <p>19 think she told me to step into the cell, and I</p> <p>20 walked into the cell, and then she said, no, come</p> <p>21 out here and sit in the hallway.</p> <p>22 I think that's -- but I was never in a cell</p> <p>23 with other inmates, the way you would think of a</p>	<p style="text-align: right;">79</p> <p>1 Q. Sir, my question, though, was: Did you</p> <p>2 ever make a request to any staff at Central</p> <p>3 Booking?</p> <p>4 A. I wasn't there very long. What I mean</p> <p>5 by that is I was never asked that question when</p> <p>6 they took my picture.</p> <p>7 Q. Well, my question is: Did you ever</p> <p>8 make a request to staff at Central Booking? It's</p> <p>9 a yes or no.</p> <p>10 A. You're right, it is. No, I never did.</p> <p>11 Q. Were you experiencing any injuries at</p> <p>12 that point when you were at Central Booking?</p> <p>13 A. My head still hurt, but not near as</p> <p>14 much as it did when I hit the ground.</p> <p>15 Q. Were you bleeding?</p> <p>16 A. No. No. I never had that kind of an</p> <p>17 injury where, you know, blood was gushing out of</p> <p>18 me. The worst that I could see was the handcuff</p> <p>19 injury and the back of my head. I couldn't figure</p> <p>20 out why the back of my head wasn't swelled up. I</p> <p>21 kept trying to feel for knots.</p> <p>22 Q. You were just experiencing pain there?</p> <p>23 A. It hurt.</p>
<p style="text-align: right;">78</p> <p>1 cell with bars.</p> <p>2 Q. Did you ever request medical attention</p> <p>3 while you were at Central Booking?</p> <p>4 A. I had just left the hospital. I</p> <p>5 figured the sooner I get this over with, the sooner</p> <p>6 I can get to a doctor of my own choosing.</p> <p>7 Q. So you made no requests to any of the</p> <p>8 staff at Central Booking for medical treatment?</p> <p>9 A. They were -- okay. This is -- this is</p> <p>10 in regards to that. This does answer your question.</p> <p>11 Inside the bank teller window, the woman</p> <p>12 that was booking me through, there was an envelope</p> <p>13 from ECMC, and the lady who was booking us through</p> <p>14 asked one of the two female police officers: Where</p> <p>15 is he coming from? They said ECMC. Do you have</p> <p>16 anything with him?</p> <p>17 And at this time she was inside this booth,</p> <p>18 and she opened -- made a flourish to open it up.</p> <p>19 She says, oh, these must be his medical records.</p> <p>20 She pulled it out and said, oh, yeah, they're his</p> <p>21 medical records.</p> <p>22 And she gave those medical records to the</p> <p>23 woman that was booking -- that was inside this --</p>	<p style="text-align: right;">80</p> <p>1 Q. Did you ever see a judge?</p> <p>2 A. At Central Booking?</p> <p>3 Q. Yes.</p> <p>4 A. No.</p> <p>5 Q. Were you ever taken in to like</p> <p>6 arraignment?</p> <p>7 A. At Central Booking? No.</p> <p>8 Q. And eventually you were given a desk</p> <p>9 appearance ticket?</p> <p>10 A. I signed an appearance ticket. I don't</p> <p>11 know if it's a desk appearance.</p> <p>12 Q. Sure.</p> <p>13 How long were you at Central Booking?</p> <p>14 A. I'm going to say about an hour. I</p> <p>15 might be wrong.</p> <p>16 Q. Did there come a time when you were</p> <p>17 released from Central Booking?</p> <p>18 A. No. They put me back in a police car</p> <p>19 and took me back to ECMC.</p> <p>20 Q. Do you know why you were taken back to</p> <p>21 ECMC?</p> <p>22 A. Not at the time. They didn't tell me:</p> <p>23 We're going to take you back to ECMC.</p>

20 (Pages 77 to 80)

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<p style="text-align: right;">81</p> <p>1 When they loaded me into the car at Central</p> <p>2 Booking, as in taking me out, I thought they were</p> <p>3 taking me like to Alden Holding Center or some</p> <p>4 other jail or some other wing of the prison.</p> <p>5 Q. Did you ever ask -- did you ever ask</p> <p>6 where you were going?</p> <p>7 A. At this point I'm still under the power</p> <p>8 and control of these two feminazis, and I don't</p> <p>9 think I'm going to get a straight answer from them</p> <p>10 even if I ask them for something, so --</p> <p>11 Q. Well, it's a yes or no question, right?</p> <p>12 I'm going to direct you to answer my question.</p> <p>13 A. Okay.</p> <p>14 Q. Did you ever ask them where you were</p> <p>15 going?</p> <p>16 A. No.</p> <p>17 Q. What happened when you got back to</p> <p>18 ECMC?</p> <p>19 A. We went back in the emergency room, and</p> <p>20 I'm not really familiar with like the corridors</p> <p>21 there, but we went through the emergency room and</p> <p>22 through a bunch of corridors and we got to a door.</p> <p>23 It was a CPAP unit.</p>	<p style="text-align: right;">83</p> <p>1 psychiatrist.</p> <p>2 After the triage, speaking to the woman, I</p> <p>3 think that interview lasted about five minutes, and</p> <p>4 then I think the interview with the doctor lasted</p> <p>5 about two, maybe three minutes.</p> <p>6 Q. Did you curse or yell during that exam?</p> <p>7 A. No, no, no, no.</p> <p>8 Q. Were you prescribed any medication --</p> <p>9 A. No.</p> <p>10 Q. -- that second trip?</p> <p>11 A. No.</p> <p>12 Q. At what point did you leave ECMC that</p> <p>13 second time?</p> <p>14 A. The second clinician, the doctor I</p> <p>15 spoke to for a couple minutes, I essentially</p> <p>16 explained to him a lot of the ground we've covered</p> <p>17 here today. And he said, is there any way I can</p> <p>18 confirm this? And I said, well, you can call</p> <p>19 Rachel. She was at home. She watched the whole</p> <p>20 thing.</p> <p>21 And he said, so you have a lawyer? I said,</p> <p>22 yeah. I've got a couple of them. And he said,</p> <p>23 they're already involved in this? And I said,</p>
<p style="text-align: right;">82</p> <p>1 Q. Did you undergo any additional diagnostic</p> <p>2 testing, like x-rays or CAT scans, when you were</p> <p>3 there that second time?</p> <p>4 A. The question of diagnostic, I -- but</p> <p>5 I didn't have any like CAT scans or machine</p> <p>6 diagnostic.</p> <p>7 Q. So somebody examined you?</p> <p>8 A. Yeah. I was triaged.</p> <p>9 Q. Were you given any medical diagnosis</p> <p>10 that second stay at ECMC?</p> <p>11 A. No. My understanding -- to be frank,</p> <p>12 my understanding was gleaned from that experience</p> <p>13 at the CPAP unit that until halfway through it,</p> <p>14 they didn't even know I had been in the emergency</p> <p>15 room that morning, so they were just treating me as</p> <p>16 if I had been picked up by two policemen and</p> <p>17 brought there and dropped off.</p> <p>18 Q. Did the -- did you speak to a doctor</p> <p>19 while you were there?</p> <p>20 A. After the triage, I spoke to two -- two</p> <p>21 different people there. One was a woman. I think</p> <p>22 she was a psychiatric nurse. And then the second</p> <p>23 one was a man, oriental guy. I think he was a</p>	<p style="text-align: right;">84</p> <p>1 yeah, I hope. And he said, well, let me call</p> <p>2 Rachel.</p> <p>3 So he left. About ten, 15 minutes later, a</p> <p>4 woman called my name, and I walked up and said,</p> <p>5 yes. And she said, you've got the golden ticket.</p> <p>6 And I said, well, that's Charlie and the Chocolate</p> <p>7 Factory. She said, no. The doctor has ordered</p> <p>8 your release immediately.</p> <p>9 Q. Do you recall the name of that doctor?</p> <p>10 A. Not off the top of my. I've got</p> <p>11 records that indicate who the guy was.</p> <p>12 Q. Okay.</p> <p>13 A. But I don't -- I don't remember his</p> <p>14 name.</p> <p>15 Q. Did you leave ECMC of your -- on your</p> <p>16 own?</p> <p>17 A. They were going to get me a cab home,</p> <p>18 but Rachel had followed essentially where I was</p> <p>19 most of the day, with the help of other people, and</p> <p>20 she came to the hospital.</p> <p>21 I think Earl was watching the three boys,</p> <p>22 and she came to the hospital, and she picked me up</p> <p>23 right there at the door, and they had already</p>

21 (Pages 81 to 84)



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<p style="text-align: right;">85</p> <p>1 called a cab, but Rachel came and got me.</p> <p>2 Q. So at what point did the police leave</p> <p>3 you at ECMC?</p> <p>4 A. When I got to the door of the CPAP</p> <p>5 unit, my hands were still cuffed, and the one</p> <p>6 police officer said, do you want me to take the</p> <p>7 handcuffs off now? We're at the door where the</p> <p>8 clinicians from the CPAP unit are going to come.</p> <p>9 And I said, well, you've been brutalizing me</p> <p>10 all day. I said, now you're going to take the</p> <p>11 handcuffs off and try to make yourselves look good</p> <p>12 in front of these CPAP people? I said, how much</p> <p>13 longer do you think they're going to be on? He</p> <p>14 said, oh, a minute or so. I said, well, why don't</p> <p>15 you just let the handcuffs stay on for the next</p> <p>16 minute.</p> <p>17 Q. So you didn't complain about them</p> <p>18 hurting you or anything?</p> <p>19 A. Well, they weren't on excessively at</p> <p>20 that point in the day. The injury had already been</p> <p>21 sustained, and they were kind of loose. And I</p> <p>22 said, well, you know, let's not -- let's show them</p> <p>23 what you did, you know.</p>	<p style="text-align: right;">87</p> <p>1 think I had any conversation with them.</p> <p>2 Q. When were you arraigned on criminal</p> <p>3 charges?</p> <p>4 A. It was unusual, because it was ten or</p> <p>5 12 days after.</p> <p>6 When they gave me that appearance ticket,</p> <p>7 they gave me an appearance ticket for a felony, and</p> <p>8 then I had to come back for the arraignment like</p> <p>9 ten or 12 days later.</p> <p>10 Q. Did the ticket direct you what day to</p> <p>11 come back to court?</p> <p>12 A. Yeah.</p> <p>13 Q. Do you recall what judge you appeared</p> <p>14 in front of?</p> <p>15 A. McLeod.</p> <p>16 Q. Was it the same judge every time?</p> <p>17 A. Yeah.</p> <p>18 Q. Do you recall how many times you went</p> <p>19 back to court?</p> <p>20 A. If I said six or seven.</p> <p>21 Q. On your first arraignment did you enter</p> <p>22 a plea?</p> <p>23 A. I think I did, but I can't remember for</p>
<p style="text-align: right;">86</p> <p>1 Q. But you didn't ask them to be taken off</p> <p>2 at the point that they offered to take them off?</p> <p>3 A. I asked them how much longer they were</p> <p>4 going to be on. They said, another minute or so.</p> <p>5 I said, well, let the staff see how you treat</p> <p>6 people when you bring them to CPAP who were</p> <p>7 completely reasonable.</p> <p>8 Q. Did you ever threaten the police in the</p> <p>9 ride from Central Booking --</p> <p>10 A. No.</p> <p>11 Q. -- to ECMC?</p> <p>12 A. No.</p> <p>13 Q. Did you ever curse at them during that</p> <p>14 ride?</p> <p>15 A. No.</p> <p>16 Q. Did you have any conversation with them</p> <p>17 during that ride?</p> <p>18 I'm sorry. I think I already asked you</p> <p>19 that.</p> <p>20 A. The first two male officers or the</p> <p>21 second set of female officers?</p> <p>22 Q. Second set of females.</p> <p>23 A. No. I don't think I had any -- I don't</p>	<p style="text-align: right;">88</p> <p>1 sure.</p> <p>2 Q. Okay. Did you have an attorney with</p> <p>3 you?</p> <p>4 A. I can't remember if Jim was in the</p> <p>5 arraignment at that point. I'm pretty sure he was,</p> <p>6 because at that point, I didn't know I had been</p> <p>7 charged with a felony, and I think it was at the</p> <p>8 arraignment that Jim discovered that it was a</p> <p>9 felony charge for the first time. We thought that</p> <p>10 they had charged me with a misdemeanor.</p> <p>11 Q. Was Jim your attorney on the criminal</p> <p>12 matter?</p> <p>13 A. Yes.</p> <p>14 Q. Did you incur any fees or expenses as a</p> <p>15 result of the criminal case?</p> <p>16 A. Yes.</p> <p>17 Q. What type of fees did you -- or</p> <p>18 expenses did you incur?</p> <p>19 A. Well, I had to pay Jim to represent me</p> <p>20 in the felony, and there was a violation attached</p> <p>21 to that as well.</p> <p>22 Q. So was there a court mandated fee?</p> <p>23 A. No.</p>

22 (Pages 85 to 88)

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<p style="text-align: right;">89</p> <p>1 Q. I'm sorry. A violation means one thing</p> <p>2 to me. Let me just clarify. What do you mean by</p> <p>3 violation?</p> <p>4 A. A V is below a misdemeanor?</p> <p>5 Q. Sure. Did you end up pleading guilty</p> <p>6 to a violation?</p> <p>7 A. No. Both the charges were dismissed.</p> <p>8 Q. Okay. Do you know why they were</p> <p>9 dismissed?</p> <p>10 A. I believe it was because I didn't -- I</p> <p>11 wasn't guilty of either one of them. If there's a</p> <p>12 legal minutia in there.</p> <p>13 Q. Do you know if they were outright</p> <p>14 dismissed, or did you take what's called an ACD?</p> <p>15 A. No. They were outright dismissed.</p> <p>16 Q. Did you ever give any testimony -- did</p> <p>17 you ever appear in the grand jury regarding that?</p> <p>18 A. No. The charges -- the felony, they</p> <p>19 never had a felony hearing and that was never</p> <p>20 presented to the grand jury. I was willing to</p> <p>21 testify at the grand jury but that never happened.</p> <p>22 Q. Did you ever give -- I'm sorry. I may</p> <p>23 have just asked you this again. Did you ever give</p>	<p style="text-align: right;">91</p> <p>1 January 1st, 2017?</p> <p>2 A. Mike Wolfe might have been in his house</p> <p>3 looking out the window.</p> <p>4 Q. Did you ever discuss this incident with</p> <p>5 him?</p> <p>6 A. No.</p> <p>7 Q. I know you mentioned before that Mike,</p> <p>8 shortly thereafter, stopped being your tenant. Did</p> <p>9 that have any connection to this incident?</p> <p>10 A. No. He was well on his way gone before</p> <p>11 this ever happened. In fact, that's why -- one of</p> <p>12 the reasons I took Earl downstairs and said, let's</p> <p>13 go find out from these cops what's going on.</p> <p>14 Because I have a lot of tenants from</p> <p>15 Restoration, and I have a lot of tenants with</p> <p>16 mental health problems, and they get in weird</p> <p>17 things where they're in crisis in weird ways, and</p> <p>18 if you know them and you've known them for four or</p> <p>19 five months, sometimes you can see that.</p> <p>20 But if you're a policeman and you pull up at</p> <p>21 the curb and you talk to them for 30 seconds,</p> <p>22 sometimes you don't know or sometimes you don't</p> <p>23 care. And in Buffalo's great open-air prison, the</p>
<p style="text-align: right;">90</p> <p>1 any testimony regarding this incident during the</p> <p>2 criminal case?</p> <p>3 A. No.</p> <p>4 Q. Are you aware if any police officers</p> <p>5 gave any testimony during the criminal case?</p> <p>6 A. They made sworn statements. Part of a</p> <p>7 complaint would be a sworn affidavit.</p> <p>8 Q. Sure. So you're aware of a complaint.</p> <p>9 Are you aware of them testifying in court at all?</p> <p>10 A. I'm not aware of them testifying in</p> <p>11 court.</p> <p>12 And there's an additional sworn statement</p> <p>13 which one of the two female officers made that</p> <p>14 provided my entry into the CPAP unit. So there is</p> <p>15 a -- under mental health law, she had to make a</p> <p>16 sworn statement there too, so there were two sworn</p> <p>17 statements by her.</p> <p>18 Q. Do you recall the ADA who handled the</p> <p>19 criminal matter?</p> <p>20 A. No, I don't. It was a man.</p> <p>21 Q. Aside from yourself, Earl, Rachel, and</p> <p>22 the police officers present, are you aware if there</p> <p>23 were any other witnesses to what happened on</p>	<p style="text-align: right;">92</p> <p>1 East Side, a lot of the policemen don't care if</p> <p>2 they're having a problem. Let's just get out of</p> <p>3 here.</p> <p>4 Q. So I know you mentioned you had pain to</p> <p>5 the back of your head, pain to your wrists,</p> <p>6 numbness to your hands.</p> <p>7 Any other injuries you suffered on</p> <p>8 January 1st, 2017?</p> <p>9 A. The extent of my injuries right now</p> <p>10 that I can -- that I relate directly to this, I</p> <p>11 think I have rotator cuff injuries or something's</p> <p>12 wrong with my shoulders. Particularly my right</p> <p>13 side. I have numbness, and it moves, but I have</p> <p>14 problems with my wrists, my elbow, and my shoulder</p> <p>15 on the right side. This hurts to touch. And the</p> <p>16 left side, the same thing, but to a lesser extent.</p> <p>17 It comes and goes less over here.</p> <p>18 Q. After ECMC on those two days, did you</p> <p>19 receive any other medical treatment after that?</p> <p>20 A. I went to see my primary.</p> <p>21 Q. Who is your primary?</p> <p>22 A. It's 1500 Broadway. I want to tell you</p> <p>23 her name, but I can't.</p>

23 (Pages 89 to 92)

J. Kistner - Huggins - 6/27/17

<p style="text-align: right;">105</p> <p>1 or anything else like that.</p> <p>2 Q. What's your user name on Facebook?</p> <p>3 A. James Kistner.</p> <p>4 Q. Is it public or private?</p> <p>5 A. It's public.</p> <p>6 Q. Do you mean to suggest that you were</p> <p>7 denied medical care on January 1st, 2017?</p> <p>8 A. I mean to suggest that I was denied</p> <p>9 appropriate medical care on January 1st.</p> <p>10 The officers at Schmarbeck should have</p> <p>11 allowed the ambulance to come. They should have</p> <p>12 allowed me to go to the hospital of my choosing,</p> <p>13 like a Catholic Health hospital, not a forensic</p> <p>14 unit.</p> <p>15 And they didn't do that because they were</p> <p>16 more concerned with trying to cover up the fact</p> <p>17 that they'd run somebody over with a police car</p> <p>18 than they were -- they had just injured somebody</p> <p>19 and he was laying in the middle of the street.</p> <p>20 Q. Well, did you ever make a request to go</p> <p>21 to a Catholic Health hospital to the Buffalo Police</p> <p>22 Department?</p> <p>23 A. My son was calling an ambulance and</p>	<p style="text-align: right;">107</p> <p>1 did on Facebook that might vaguely reference</p> <p>2 this --</p> <p>3 A. You're -- you're more than -- I'm</p> <p>4 sorry.</p> <p>5 Q. -- I'm going to ask you just to</p> <p>6 preserve it, and I will make a request through your</p> <p>7 attorney for a copy of it.</p> <p>8 A. I -- like I said, I don't think there</p> <p>9 is one, so I would be preserving something that</p> <p>10 doesn't exist. I don't think there are any</p> <p>11 specific references to this.</p> <p>12 My Facebook account is yours to copy. It's</p> <p>13 public. You can go on there and print all of it or</p> <p>14 any part of it, but if you want to admit that you</p> <p>15 want to talk about part of it, then talk about all</p> <p>16 of it.</p> <p>17 Q. The -- have you ever been involved in</p> <p>18 any civil lawsuits before?</p> <p>19 A. Yeah. I've had small claims as a</p> <p>20 landlord, and I've had --</p> <p>21 Q. Have you ever filed any prior notices</p> <p>22 of claim against the City of Buffalo?</p> <p>23 A. No.</p>
<p style="text-align: right;">106</p> <p>1 they told him to stop.</p> <p>2 Q. So it's --</p> <p>3 A. They were well-aware I wanted to go</p> <p>4 there.</p> <p>5 Q. I want to just direct you to answer my</p> <p>6 specific question. Did you ever make a request to</p> <p>7 the police, on January 1st, 2017, to go to a</p> <p>8 Catholic Health hospital?</p> <p>9 A. I thought I was going to jail. No.</p> <p>10 Q. Okay. Did you ever make a request for</p> <p>11 any other type of specific medical treatment that</p> <p>12 you deemed appropriate for yourself on January 1st,</p> <p>13 2017, to the Buffalo Police Department?</p> <p>14 A. Yeah. After they had brutalized me and</p> <p>15 put the handcuffs on and I was in the hospital, I</p> <p>16 asked them to take the handcuffs off because they</p> <p>17 had hurt my wrists with the handcuffs and that they</p> <p>18 had injured me and --</p> <p>19 Q. That was that first trip to ECMC?</p> <p>20 A. Yeah.</p> <p>21 Q. Okay.</p> <p>22 A. In the morning.</p> <p>23 Q. So with regard that post you think you</p>	<p style="text-align: right;">108</p> <p>1 MS. HUGGINS: I don't have any other</p> <p>2 questions.</p> <p>3 MR. OSTROWSKI: Thanks a lot.</p> <p>4 (Proceedings concluded at 1:20 p.m.)</p> <p>5 * * *</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>

27 (Pages 105 to 108)



109

1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE )

4

5 I DO HEREBY CERTIFY as a Notary Public in and  
 6 for the State of New York, that I did attend and  
 7 report the foregoing proceedings, which were taken  
 8 down by me in a verbatim manner by means of machine  
 9 shorthand. Further, that the proceedings were then  
 10 reduced to writing in my presence and under my  
 11 direction. That the proceedings were taken to be  
 12 used in the foregoing entitled action. That the  
 13 said deponent, before examination, was duly sworn  
 14 to testify to the truth, the whole truth and  
 15 nothing but the truth, relative to said action.

16

17

18

19 -----  
 ANNE T. BARONE, RPR,  
 Notary Public.

20

21

22

23

110

## 1 INDEX TO WITNESSES

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28 (Pages 109 to 110)

**EXHIBIT C**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

JAMES C. KISTNER,

Plaintiff,

vs.

Civil No.: 18-CV-00402-LJV-JJM

THE CITY OF BUFFALO, *et al.*,

Defendants.

---

**PLAINTIFF'S FIRST DOCUMENT REQUEST TO DEFENDANTS**

In accordance with Federal Rule of Civil Procedure 34, plaintiff requests that the defendants produce the following documents and things within 30 days of service of this request. Under Federal Rule of Civil Procedure 26(e), these requests are continuing in nature and require you to serve supplemental responses if you obtain further or additional information after your initial answers and before trial commences.

**INSTRUCTIONS AND DEFINITIONS**

1. If you were unable to respond fully to any request, respond to the extent possible and specify the reasons for your inability to respond in full.
2. The singular form of a noun or pronoun includes within its meaning the plural form of the noun or pronoun so used and vice versa; the use of the masculine form of a pronoun includes within its meaning the feminine form of the pronoun so used and vice versa; and the use of any tense of any verb includes within its meaning all other tenses of the verb so used.

3. If any document requested is not to be voluntarily produced because of a claim of privilege (including work product doctrine), you must identify the document with sufficient particularity including the date of the document; the author(s) of the document(s); the person or persons to whom the document(s) is addressed or distributed, including persons receiving a copy of the document(s); and the subject matter of the document(s). You must further state the nature of the privilege or protection claimed and the bases for the claim to enable the plaintiff to assess the applicability of the claim of privilege.

4. If any document or tangible thing responsive to these requests was, but is no longer in your actual or constructive possession, custody, or control, identify the document, specifying the following information: date; sender or author; recipient; persons to whom copies were furnished, together with their job titles; a description of the subject matter of the document; and the date and manner of its disposition.

5. In the event that one or more than one copy of a document exists, the original must be produced, as well as every copy on which appears any notation or marking of any sort not appearing on the original. For any documents stored or maintained in files in the normal course of business, these documents must be produced in their files, or in such a manner to preserve and identify the file from which the documents were taken.

6. Documents produced in accordance with these requests must be produced as kept in the regular course of business. Documents attached to each other should not be separated.

7. Documents must be produced with a log or other reference indicating the request number(s) to which each document is responsive.

8. Electronic, computer, or machine-readable data should be produced in an electronic form that does not require specialized or proprietary hardware or software. If you wish to provide electronic, computer, or machine-readable documents in a form different from that described above, contact counsel for plaintiff so that they can determine if the proposed format is appropriate. For all data produced, provide a complete description of the data as necessary for accurate identification of all variables, including but not limited to, definitions of column and row headers and units of measure used.

9. Each answer to each document request must be preceded by the request to which it responds.

10. "Communication" means the transmittal of information in the form of facts, ideas, inquiries, or otherwise.

11. "Document" means writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained directly or, if necessary translated by the plaintiff into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term.

12. "Plaintiff" and "defendant," as well as a party's full or abbreviated name or a pronoun referring to a party, mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation. Throughout these interrogatories, the pronouns "you" and "your" refer to the defendants.

13. “Concerning” means relating to, referring to, describing, evidencing, or constituting.

14. “And” and “or” are construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

15. “All” and “each” will be construed as “all and each.”

16. The “accident” refers to the accident shown in the video recording (Exhibit A attached to plaintiff’s complaint), where a Buffalo Police vehicle struck plaintiff at approximately 11:00 a.m. on January 1, 2017 on Schmarbeck Avenue.

17. The “incidents” refer to the acts, omissions, conduct, and events that transpired involving the defendants and plaintiff on January 1, 2017, as more fully detailed in his complaint.

18. “Similar incidents” refers to any action, omission, conduct, or complaint concerning any defendant where he or she was accused of violating an individual’s First Amendment, Fourth Amendment, or Fourteenth Amendment rights; false arrest; false imprisonment; abuse of prosecution; malicious prosecution; assault; battery; intentional infliction of emotional distress; negligence; failure to intervene; defamation; misconduct; tampering with evidence; spoliation; or otherwise where a person claimed entitlement to damages under 42 U.S.C. § 1983 based on any of their actions, omissions, or conduct.

19. These requests are continuing. The defendants must timely supplement their responses if they obtain further information between the time of responding to this discovery demand and the time of trial.

### REQUESTS FOR PRODUCTION

1. All accident reports, witness statements, depositions, complaints, informations, investigation materials, certificates of disposition, notices of claim, and criminal and civil litigation documents concerning the accident and the incidents.
2. All documents concerning the evaluation of, repairs to, or replacement of parts for the Buffalo police vehicle, which, upon information and belief, is vehicle #473, involved in the accident, from January 1, 2017 to the present.
3. All documents concerning insurance claims or requests made concerning any damage to vehicle #473 from January 1, 2017 to the present.
4. All documents concerning the defendants' employment with the City of Buffalo, including, without limitation, applications; reference and background check results; resumes or curriculum vitae; any other documents concerning hiring; reviews; documents concerning job offers, promotions, demotions, transfers, and layoffs; records confirming fitness for duty; pay and compensation documents; commendations, awards, or letters of recognition; verbal or written warnings, counseling, reprimands, or other discipline; goal-setting records; garnishments; litigation documents; workplace investigation documents; and handbook, policy, procedure, regulation, guideline, and any other acknowledgments concerning their employment.
5. A copy of each of the defendants' union files or an authorization to obtain them, including the address of the union.
6. A copy of the job descriptions for each position the defendants held with the City of Buffalo from the time they began working there to the present.

7. All documents concerning the defendants' attempts to admit plaintiff into a CPEP unit under Mental Hygiene Law § 9.41, including, without limitation, the "9.41 paper" they submitted to ECMC.

8. All documents concerning calls to Schmarbeck Avenue involving the defendants from January 1, 2007 to the present.

9. All documents concerning the defendants' requests to:

- a. Cancel any and all 911 or other calls concerning the accident or incidents.
- b. Change any of the defendants' logs concerning their duty on the date of the accident or incidents.

10. All documents concerning the Buffalo Police Department's policies, procedures, regulations, instructions, or guidance concerning:

- a. Mental-health interventions or referrals.
- b. Handcuffing.
- c. Transporting people who are arrested, in custody, or otherwise being transported in police vehicles.
- d. Providing medical care or transport to medical care facilities.
- e. Use of force, including use-of-force investigations and use-of-force reviews, assessments, or complaints.
- f. Assistance to officers.
- g. Officer-involved motor-vehicle accidents.
- h. Damage to police vehicles.
- i. Court appearances.



- j. Pedestrian accidents.
- k. Employee investigations and discipline.
- l. Incident reporting.
- m. Logging responses and changing logs of responses.
- n. Ethics and professionalism.
- o. Fair and impartial policing.
- p. Roles of each title or classification of each police defendant at the time of the accident and any prior title or classification.
- q. Fitness-for-duty evaluations.
- r. Whistleblowing.
- s. First-Amendment-protected activities.
- t. Interviewing witnesses.
- u. Strip searches and body-cavity searches.
- v. Performance evaluations.
- w. Urinalysis or other capacity or fitness checks on officers.
- x. Completing supporting documents for tasks undertaken by them in their duties.

11. All documents concerning the use of Mental Hygiene Law § 9.41, staying with detainees or people in custody while they are being evaluated or admitted into CPEP (comprehensive psychiatric emergency program), and use of areas or rooms for CPEP evaluations or admissions.

12. All documents concerning the defendants' training while employed by the City of Buffalo Police Department.

13. All documents the defendants intend to rely upon in their defense, including at trial.
14. All photographs, video recordings, or audio recordings concerning plaintiff, the accident, or the incidents, including, without limitation, any vehicle or vest-recorded footage and any 911 calls.
15. All statements of the plaintiff, defendants, witnesses, or other parties concerning the accident or the incidents.
16. Copies of all complaints, accusations, or concerns expressed about the defendants in their performance of their duties for the City of Buffalo.
17. All documents that you reviewed to answer or that support your interrogatory responses.
18. All documents concerning the plaintiff's criminal proceeding in Buffalo City Court (CD # 17-10506).
19. All other documents concerning plaintiff, not otherwise produced in response to these document demands.
20. All documents concerning the red van shown in Exhibit A to the complaint.
21. All documents concerning the initial call to Schmarbeck Avenue on the day of the accident that, upon information and belief, was from Michael Wolfe.
22. All surveillance materials concerning the plaintiff.
23. All communications concerning the plaintiff.
24. All communications concerning the defendants concerning the plaintiff, the accident, and the incidents.

25. All documents concerning similar incidents from the time each defendant began working with the City of Buffalo to the present.

26. All documents concerning the defendants' records of calls made on the day of the accident.

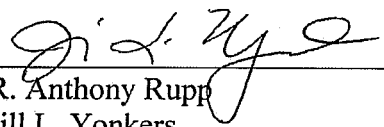
27. All documents concerning the defendants' communication with a dispatcher on the day of the accident and the incidents.

28. All documents referenced in defendants' Rule 26 initial disclosures.

Dated: September 12, 2018  
Buffalo, New York

**RUPP BAASE PFALZGRAF CUNNINGHAM LLC**  
*Attorneys for Plaintiff*

By: \_\_\_\_\_

  
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**EXHIBIT D**

### Vehicle Information

## Service Information

### Service COOLING SYSTEM

## Repair Notes

[illegible]

**EXHIBIT E**

**JAMES KISTNER**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

-----  
JAMES C. KISTNER,

Plaintiff,

- vs - Civil Action No.  
18-cv-00402

THE CITY OF BUFFALO,  
c/o Corporation Counsel,  
BYRON LOCKWOOD, individually and in  
his capacity as Police Commissioner  
of the Buffalo Police Department,  
DANIEL DERENDA, individually and in his  
capacity as Police Commissioner of the  
Buffalo Police Department,  
LAUREN McDERMOTT, individually and  
in her capacity as a Buffalo Police Officer,  
JENNY VELEZ, individually and in her  
capacity as a Buffalo Police Officer,  
KARL SCHULZ, individually and in his  
capacity as a Buffalo Police Officer,  
KYLE MORIARTY, individually and in his  
capacity as a Buffalo Police Officer,  
DAVID T. SANTANA, individually and in his  
capacity as a Buffalo Police Officer,  
JOHN DOE(S), individually and in his/their  
capacity as a Buffalo Police Officer(s),  
Defendants.

-----

1 Examination before trial of **JAMES KISTNER**,  
2 Plaintiff, taken pursuant to the Federal Rules of  
3 Civil Procedure, in the law offices of RUPP BAASE  
4 PFALZGRAF & CUNNINGHAM, LLC, 1600 Liberty Building,  
5 Buffalo, New York, on February 6, 2020, commencing  
6 at 10:20 a.m., before ANNE T. BARONE, RPR, Notary  
7 Public.

8  
9 APPEARANCES: RUPP BAASE  
PFALZGRAF & CUNNINGHAM, LLC,  
10 By CHAD DAVENPORT, ESQ.,  
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11 Buffalo, New York 14202,  
(716) 854-3400,  
12 davenport@ruppbaase.com,  
Appearing for the Plaintiff.  
13  
TIMOTHY A. BALL, ESQ.,  
14 Corporation Counsel,  
By MAEVE E. HUGGINS, ESQ.,  
15 Assistant Corporation Counsel,  
1137 City Hall,  
16 Buffalo, New York 14202,  
(716) 851-4334,  
17 mhuggins@city-buffalo.com,  
Appearing for the Defendants.  
18  
19

10:20:59 20 **JAMES KISTNER**, 37 Schmarbeck, Buffalo,  
10:21:12 21 New York 14212, after being duly called and sworn,  
10:21:12 22 testified as follows:  
10:21:19 23



**EXAMINATION BY MS. HUGGINS:**

Q. Good morning, Mr. Kistner. We met again for a second time just a moment ago off the record. My name is Maeve Huggins. I'm an attorney for the City of Buffalo. We're here today for your deposition in regards to a federal lawsuit that you filed involving an incident with the Buffalo Police Department.

Have you given any sworn testimony since your 50-h in June of 2017?

A. No.

Q. Okay. I'd just like to review the ground rules before we proceed with the deposition.

We have -- you're under oath, obviously, and we have a reporter here who's taking down everything that's being said.

For the sake of the reporter and so that we have a clean record, I'd ask that you allow me to finish my question before you answer. I'll extend the same courtesy to you and allow you to finish before I move on to the next question.

If at any point you don't understand my

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1120 Liberty Building

Buffalo, New York 14202 - (716) 853-5600

*Kistner - Huggins - 2/6/20*

8

10:25:51 1 my questioning. Fair enough?

10:25:52 2 A. Okay.

10:25:55 3 Q. Have you discussed the January 1st,

10:25:57 4 2017 incident with anyone, aside from your

10:26:02 5 attorneys?

10:26:06 6 A. Yes.

10:26:06 7 Q. Who have you discussed that incident

10:26:08 8 with?

10:26:08 9 A. My family.

10:26:10 10 Q. Who in your family?

10:26:15 11 A. My sister Gwen.

10:26:18 12 Q. Anyone else in your family?

10:26:21 13 A. Well, Rachel and I aren't married, but

10:26:24 14 I've talked to Rachel about it.

10:26:27 15 Q. Anyone else aside from Gwen and Rachel

10:26:33 16 that you recall?

10:26:34 17 A. Since when? I mean --

10:26:37 18 Q. Well --

10:26:38 19 A. WIVB. I did an interview with them.

10:26:48 20 Q. Anyone else?

10:26:49 21 A. I can't remember anybody off the top of

10:26:55 22 my head.

10:26:55 23 Q. Have you discussed what you were going

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*Kistner - Huggins - 2/6/20*

9

10:26:57 1 to testify about in this deposition with anyone  
10:27:00 2 aside from your attorney?

10:27:03 3 **A.** No. Other than Rachel.

10:27:12 4 **Q.** Did you take any photographs of the  
10:27:14 5 January 1st, 2017 incident involving the Buffalo  
10:27:20 6 Police Department?

10:27:20 7 **A.** No.

10:27:20 8 **Q.** Did you take any photographs of any  
10:27:23 9 injuries you allegedly suffered from that incident?

10:27:32 10 **THE WITNESS:** Rachel and Earl used their  
10:27:36 11 cell phones, I think, to try to get pictures of my  
10:27:39 12 wrists.

10:27:42 13 I'm not exactly sure which one of those cell  
10:27:44 14 phones we were able to download, but you got them.

10:27:51 15 Other than that, no.

10:27:52 16 **BY MS. HUGGINS:**

10:27:52 17 **Q.** Are you aware of how many photographs  
10:27:54 18 were taken of your wrists?

10:27:55 19 **A.** Not a clue. I mean, off the top of my  
10:27:58 20 head, no.

10:27:59 21 **Q.** Do you know when those photographs were  
10:28:01 22 taken?

10:28:06 23 **A.** The first week of January 2017.

**JACK W. HUNT & ASSOCIATES, INC.**

*1120 Liberty Building*

*Buffalo, New York 14202 - (716) 853-5600*

*Kistner - Huggins - 2/6/20*

10

10:28:10 1 I don't know the day.

10:28:25 2 Q. Are you aware of any camera or  
10:28:27 3 surveillance systems that captured any video of the  
10:28:31 4 January 1st, 2017 incident involving the Buffalo  
10:28:36 5 Police Department?

10:28:36 6 A. Yeah.

10:28:37 7 Q. What camera system or surveillance  
10:28:40 8 system are you aware of that may have captured  
10:28:44 9 footage on that day?

10:28:45 10 A. Rachel's house at 37 Schmarbeck has  
10:28:49 11 a Swann system. I think it has eight cameras.

10:28:56 12 There are two of them that are mounted below  
10:28:58 13 the eaves up on the third floor that photograph the  
10:29:04 14 front of the house. One on the right and one on  
10:29:08 15 the left of those upper windows.

10:29:11 16 Q. When you said two, are you referring to  
10:29:13 17 two individual cameras of the eight?

10:29:15 18 A. Yeah.

10:29:17 19 Q. Where are the remaining six cameras  
10:29:20 20 positioned?

10:29:20 21 A. In the backyard, where the kids play;  
10:29:22 22 or on the side of the house, looking down where the  
10:29:29 23 kids play; or on the back of the house, looking to

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10:29:32 1 the right and the left.

10:29:40 2 Q. Who purchased that system?

10:29:50 3 A. Rachel and I went to Walmart, and she  
10:29:54 4 paid for it.

10:29:54 5 Q. When was it installed?

10:30:05 6 A. I'm going to guess, 2015. I don't even  
10:30:11 7 know the month.

10:30:12 8 Q. How are the cameras in that system  
10:30:15 9 activated?

10:30:17 10 A. They run all the time. There are ways  
10:30:23 11 you can set it to where they'll just go on when  
10:30:27 12 there's motion, but we're not that sophisticated.  
10:30:31 13 We never understood how to make that work.

10:30:33 14 So we just took it out of the box, put it  
10:30:36 15 on the shelf, plugged it in, wired the cameras up,  
10:30:39 16 I mounted them outside, and turned it on. And  
10:30:45 17 that's essentially how it's worked ever since we  
10:30:48 18 bought it. It's still working like that.

10:30:50 19 Q. Has it been just recording continuously  
10:30:52 20 since it was installed?

10:30:53 21 A. I think so, yeah. Unless there's  
10:30:55 22 a power failure or something, yeah. But we never  
10:30:59 23 turned it off except once, that I remember real

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10:31:03 1 distinctly.

10:31:04 2 Q. When did you turn it off?

10:31:09 3 A. In January of 2017, Jim Ostrowski told  
10:31:16 4 me: You have to save the video on that machine.

10:31:22 5 I called Gary, a fellow who had repaired  
10:31:25 6 a computer for me, and said, I've got to get this  
10:31:28 7 off of here, and I don't know how to do it.

10:31:33 8 We had unplugged the machine I'm going to  
10:31:39 9 say 9 o'clock at night on January 1st, which was  
10:31:43 10 after all this was over and I was home, because we  
10:31:49 11 were told: Don't let it keep running, because we  
10:31:53 12 don't know when we're going to get there to  
10:31:56 13 retrieve it. Just unplug it, and I'll try to be  
10:31:59 14 there tomorrow or the next day.

10:32:01 15 That's what Gary, the guy that told me he  
10:32:04 16 was coming to get it, so --

10:32:05 17 Q. Do you have -- I apologize. Continue.

10:32:11 18 A. I don't know when Gary actually showed  
10:32:14 19 up. I think it was probably the next day or the  
10:32:16 20 day after. We gave him the keyboard, the mouse,  
10:32:20 21 and the DVR.

10:32:22 22 We didn't give him any of the cameras  
10:32:24 23 because they're all hooked up with leads going

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10:32:26 1 outside.

10:32:27 2 So he took the machine and the keyboard that

10:32:30 3 came with it and the -- does it -- maybe it didn't

10:32:33 4 have a keyboard. Just a mouse and the clicker.

10:32:35 5 The remote control.

10:32:38 6 Q. In terms of hardware of that system,

10:32:42 7 there's eight cameras and then there's what you've

10:32:45 8 called a DVR. Is that -- what is your understanding

10:32:48 9 of what that DVR is and does for the system?

10:32:54 10 A. Just records everything, everything it

10:32:59 11 sees, and then it lets you go back in with the

10:33:01 12 mouse and ask it to replay what is up there.

10:33:06 13 That's about as sophisticated as we ever got

10:33:10 14 with it so we could see what happened outside if

10:33:12 15 something was amiss. We could rewind it and say,

10:33:16 16 what happened here?

10:33:16 17 Q. Do you view the video on the DVR or is

10:33:20 18 there a screen?

10:33:20 19 A. There's a monitor.

10:33:23 20 Q. Is the monitor something apart of the

10:33:26 21 Swann system?

10:33:26 22 A. No.

10:33:27 23 Q. You've hooked the system up to the

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10:33:28 1 monitor?

10:33:29 2 **A.** Yeah. It's a TV.

10:33:30 3 **Q.** What is your understanding of how  
10:33:33 4 frequently the footage will record over itself?

10:33:38 5 **A.** I don't know.

10:33:44 6 **Q.** The two cameras that are affixed  
10:33:48 7 under the third-floor eaves on the front of  
10:33:52 8 37 Schmarbeck, what areas of the street does those  
10:34:00 9 cameras capture?

10:34:03 10 **A.** The one on the left -- if you're in the  
10:34:05 11 house looking out, the one on the left, if you're  
10:34:08 12 in the house looking out, looks almost like  
10:34:10 13 straight down.

10:34:12 14 The one on the right looks to the left, like  
10:34:16 15 you're looking up the street toward Broadway.

10:34:20 16 **Q.** Are other homes located on Schmarbeck  
10:34:24 17 within the view of that second camera you've  
10:34:27 18 described?

10:34:32 19 **A.** 24 -- to a large part, 24 Schmarbeck,  
10:34:40 20 that's on that camera. I'm pretty sure you can see  
10:34:47 21 the profile of 33 on that camera. The camera on  
10:34:57 22 the right, as you're looking toward the street.

10:34:59 23 The camera on the left, I don't think you

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10:35:01 1 can see any other houses. The one that looks  
10:35:07 2 almost straight down, I don't think you can see any  
10:35:09 3 other houses.

10:35:12 4 Q. Does the camera capture the sidewalk  
10:35:18 5 and the streets in front of both 24 and 33  
10:35:23 6 Schmarbeck Avenue?

10:35:26 7 A. The one on the right that looks in that  
10:35:30 8 direction, yeah, it captures the sidewalk on both  
10:35:36 9 sides of the street.

10:35:38 10 Q. Why did you purchase the -- strike  
10:35:41 11 that.

10:35:41 12 Why did Rachel purchase the Swann system, if  
10:35:53 13 you know?

10:35:53 14 A. There are two reasons. For home  
10:35:56 15 security, and it was on sale \$200 off.

10:36:11 16 Q. Does the Swann system allow someone to  
10:36:16 17 access video footage without preserving the  
10:36:19 18 footage?

10:36:22 19 A. Say that again.

10:36:24 20 Q. Sure. Let me rephrase it slightly.  
10:36:26 21 Using the system, are you able to view  
10:36:29 22 footage without preserving it?

10:36:35 23 A. I don't know. You mean, can I --

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10:36:41 1 I don't know.

10:36:42 2 Q. Have you ever gone onto the system,  
10:36:46 3 accessed footage from a period of time, and not  
10:36:55 4 saved that footage?

10:37:05 5 A. We -- either Rachel or I -- Earl even  
10:37:09 6 used it in January, he looked at it. We look at it  
10:37:13 7 almost every day. I mean, if there's something --  
10:37:16 8 it's kind of like the window on the world outside.

10:37:25 9 If you're missing a garbage can, you can go  
10:37:28 10 back and find out what happened to the trash can.  
10:37:30 11 Where did the trash can go?

10:37:35 12 If Charlie lost his ball in the backyard,  
10:37:37 13 you can look: Where did Charlie's ball go?

10:37:44 14 We use it in that sense to look at what has  
10:37:47 15 happened to try to understand.

10:37:54 16 Have we ever used it to look back and not  
10:37:57 17 preserved it? I think to preserve it -- it's still  
10:38:00 18 beyond me. I've still got to call somebody in and  
10:38:03 19 say, get this off of here. I want to keep it  
10:38:05 20 forever.

10:38:05 21 Q. Is it your understanding, based on your  
10:38:09 22 experience with the Swann system, that you have the  
10:38:11 23 ability to access video, and preserving it is

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10:38:14 1 something separate?

10:38:16 2 **A.** I don't know what its abilities are.

10:38:19 3 I don't know. We just -- we use it for what we use  
10:38:22 4 it for.

10:38:23 5 I'm sure it will do all kind of things if  
10:38:26 6 you're smart enough to sit there and study the  
10:38:29 7 book. I don't even know if I've got the book  
10:38:31 8 anymore.

10:38:38 9 **Q.** In January of 2017, who had access to  
10:38:42 10 the footage on the Swann system DVR?

10:38:46 11 **A.** Just Rachel and I. But Earl, he was  
10:38:50 12 there that morning, and when I was in the police  
10:38:54 13 car and he came back in the house, while Rachel was  
10:38:57 14 at the front window, Earl went -- because he's  
10:39:02 15 smart enough to figure out how to play and rewind,  
10:39:05 16 which is about all I ever showed him, because I  
10:39:10 17 don't know any more about it -- he looked at it.  
10:39:13 18 So Earl looked at it.

10:39:15 19 Other than Earl looking at it that day --  
10:39:18 20 oh, and Earl showed it to Jim Ostrowski that  
10:39:22 21 morning. So that's at least twice that Earl  
10:39:25 22 rewound it on that morning and looked at it.

10:39:26 23 **Q.** How did you come to learn that?

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10:56:40 1           A.     Yeah. I have four big ones and three  
10:56:42 2 little ones.

10:56:43 3           Q.     Who is the mother of Kendall?

10:56:48 4           A.     I want to make sure I get her last  
10:56:50 5 name. I think her name is still Barber. Lisa  
10:56:57 6 Barber.

10:56:58 7           Q.     Do you have any contact with  
10:56:59 8 Ms. Barber?

10:57:03 9           A.     Not in six or seven years.

10:57:06 10          Q.     Ever discuss this January 1st --

10:57:09 11          A.     No.

10:57:10 12          Q.     -- incident with her? Okay.

10:57:12 13               Were any of your children residing with you  
10:57:14 14 on January 1st, 2017?

10:57:22 15          A.     The three little ones were at Rachel's  
10:57:25 16 house at 37, next door. I'm sleeping and staying  
10:57:29 17 over at 33, which is the house I own. Earl was  
10:57:32 18 home. I can't remember whether he -- I know he had  
10:57:39 19 to sleep over at Rachel's on the first floor at 37,  
10:57:42 20 so Earl was staying with Rachel that night. I got  
10:57:48 21 up early and came over.

10:57:55 22               Almost -- almost constantly since this,  
10:57:58 23 though, I've been spending almost all of the time

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10:58:00 1 over at Rachel's because she still worries.

10:58:05 2 Q. When did you stop residing at 33 and  
10:58:09 3 staying at 37?

10:58:10 4 A. Consistently?

10:58:11 5 Q. Consistently.

10:58:17 6 A. I don't know. Eight months ago.  
10:58:19 7 A year ago.

10:58:27 8 Q. What caused that change in staying at  
10:58:30 9 33 to then consistently staying --

10:58:32 10 A. Rachel's mental health.

10:58:59 11 Q. -- at 37?

10:58:59 12 Where were Laurel, Joelle, and Kendall  
10:59:03 13 living in January of 2017?

10:59:16 14 A. I don't know. I don't remember.

10:59:17 15 Q. Were they residing in the Buffalo area?

10:59:26 16 A. I want to say Joelle was, but I think  
10:59:30 17 the other two were out of town.

10:59:33 18 Q. Did you ever discuss the January 1st,  
10:59:36 19 2017 incident with Laurel, Joelle, or Kendall?

10:59:40 20 A. No.

10:59:57 21 Q. What properties, if any, do you own on  
11:00:01 22 Schmarbeck Avenue?

11:00:02 23 A. 24, 29, and 33.

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11:00:09 1 Q. What type of property is 24 Schmarbeck?

11:00:11 2 A. 24 is a double. A traditional 30 by 110.

11:00:17 3 Q. When you say double, is it like

11:00:19 4 a lower, upper double?

11:00:21 5 A. Yeah.

11:00:24 6 Q. How long have you owned 24 Schmarbeck?

11:00:32 7 A. I'm guessing to say 2007, but I think

11:00:34 8 that's kind of accurate.

11:00:37 9 Q. What type of property is 29 Schmarbeck?

11:00:40 10 A. It's an empty lot.

11:00:44 11 Q. Has it always been an empty lot while

11:00:47 12 you have owned it?

11:00:48 13 A. Yeah.

11:00:48 14 Q. And what type of residence -- not

11:00:50 15 residence -- what type of property is 33 Schmarbeck?

11:00:54 16 A. It's a single-family home. It's got --

11:01:00 17 it's got an office in the back, and it's got --

11:01:10 18 it's got a finished attic and a two bedroom on the

11:01:14 19 first floor, which if I get rid of the office,

11:01:17 20 I can make a three bedroom on the first floor. So

11:01:20 21 it's essentially a double.

11:01:21 22 Q. Are those rooms that you have described

11:01:23 23 separate units?

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11:01:26 1           **A.**     They have been since I got it.

11:01:37 2           **Q.**     What sources of income did you have in  
11:01:38 3 January of 2017?

11:01:47 4           **A.**     Two apartment rents -- no. Three  
11:01:50 5 apartment rents. Three apartment rents. I've got  
11:01:53 6 one of Rachel's apartment rents and then the two --  
11:01:59 7 the two rooms I had rented, so there were three  
11:02:01 8 sources.

11:02:02 9           It's not that way anymore but that's what it  
11:02:04 10 was then.

11:02:05 11          **Q.**     The three units that you have described,  
11:02:11 12 does that encompass 24 and 33 Schmarbeck?

11:02:15 13          **A.**     No. That would be the two at 33 and  
11:02:20 14 one of Rachel's units at 41.

11:02:24 15          **Q.**     Was 24 Schmarbeck empty?

11:02:28 16          **A.**     24 has been a project since the day we  
11:02:32 17 got it. Other things are constantly calling me off  
11:02:38 18 of it, and then I've got to go back to it, and  
11:02:43 19 then --

11:02:46 20          **Q.**     The unit that Rachel owns at  
11:02:47 21 41 Schmarbeck --

11:02:49 22          **A.**     Yeah.

11:02:50 23          **Q.**     -- did you ever reside at 41 Schmarbeck?

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11:02:52 1           **A.**     Yeah.

11:02:52 2           **Q.**     When did you reside there?

11:02:54 3           **A.**     When Rachel got the first building

11:02:57 4 there, we were still undergrads. Rachel and

11:03:01 5 I lived together there, and then on the weekends,

11:03:04 6 the three older kids would come over. They were

11:03:07 7 like eight, nine, and 12. So -- I don't know

11:03:17 8 how -- that was 20 years ago.

11:03:21 9           We did live there I think for six years.

11:03:27 10 Maybe seven.

11:03:28 11           **Q.**     Some time ago, though?

11:03:29 12           **A.**     Oh, yeah. It's a long, long time ago.

11:03:31 13           **Q.**     What type of building is 41 Schmarbeck?

11:03:34 14           **A.**     41 is identical to 24. They're like

11:03:39 15 mirror images of each other. They're just across

11:03:41 16 the street. It's a traditional Buffalo double.

11:03:46 17 Four bedrooms on the first floor, three bedrooms on

11:03:49 18 the second floor.

11:03:50 19           **Q.**     With the two units being an upper and

11:03:52 20 a lower?

11:03:52 21           **A.**     Yeah. And if you finish the attic,

11:03:55 22 that's another 900 square feet.

11:03:58 23           **Q.**     Aside from the rent that you

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11:49:59 1 Q. Was anyone present at 33 when you woke  
11:50:01 2 up on January 1st?

11:50:04 3 A. No.

11:50:05 4 Q. What did you do when you woke up?

11:50:10 5 A. Got my shoes on and went next door to  
11:50:13 6 see if Earl was awake and Rachel and the boys.

11:50:16 7 Q. Was Earl staying in Rachel's unit on --  
11:50:20 8 at that time period?

11:50:21 9 A. I think Earl was downstairs in the  
11:50:23 10 first bedroom.

11:50:24 11 See, 37, where Rachel lived then, it's  
11:50:29 12 a double, but she has both units. She uses the  
11:50:33 13 whole house. Downstairs, there's a front bedroom  
11:50:37 14 downstairs, which has a bed in it, and when Earl  
11:50:40 15 comes over, Earl usually sleeps there.

11:50:45 16 There's Rachel and the three little boys,  
11:50:48 17 they were in cribs then -- I'm pretty sure they  
11:50:50 18 were still in cribs -- and they're all up on the  
11:50:54 19 second floor.

11:50:55 20 I have a room in the back on the second  
11:50:57 21 floor at 37 that has a bed in it. And then I've  
11:51:00 22 got the office that's got a barber chair. I can go  
11:51:04 23 over there. I've got two mats in the back, if I want

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11:51:08 1 to lay down.

11:51:09 2 But if I just go over there and turn on the  
11:51:11 3 TV and go to sleep, it gives her a sense of she's  
11:51:15 4 living by herself for a minute.

11:51:17 5 Q. What was the weather on January 1st,  
11:51:30 6 2017?

11:51:30 7 A. I don't remember.

11:51:31 8 Q. What were you wearing?

11:51:36 9 A. The whole day? You mean when I went  
11:51:38 10 outside?

11:51:39 11 Q. That morning.

11:51:42 12 A. I was wearing my -- a pair of pants and  
11:51:45 13 a shirt, and I had -- I think I had a windbreaker  
11:51:53 14 on, and I had leather-soled dress shoes on.

11:52:01 15 Q. What type of tread was on those  
11:52:04 16 dress shoes?

11:52:08 17 A. All I can say is leather soles.

11:52:19 18 Q. At some point in the morning, you went  
11:52:22 19 over to 37 Schmarbeck?

11:52:26 20 A. Yeah.

11:52:26 21 Q. What time did you leave 33 and go over  
11:52:29 22 to 37?

11:52:30 23 A. It was early. Like 6:30, 7 o'clock in

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11:52:32 1 the morning. It was early.

11:52:36 2 Q. Who was present at 37 that morning?

11:52:44 3 A. From my memory it was me, Rachel, Earl,  
11:52:47 4 and the three little boys.

11:52:51 5 Q. At some point that morning your  
11:52:54 6 attention was drawn to a red van parked on  
11:52:57 7 Schmarbeck Avenue?

11:52:58 8 A. Yeah. I saw Wolfe -- I saw the van  
11:53:01 9 pull up. I was looking out the window when the van  
11:53:06 10 pulled up.

11:53:06 11 Q. What type of street -- actually, strike  
11:53:09 12 that.

11:53:09 13 The block that your properties are located  
11:53:14 14 on Schmarbeck Avenue, is that a two-way street or  
11:53:18 15 a one-way street?

11:53:21 16 A. It's a two-way street.

11:53:23 17 Q. How many lanes of traffic are located  
11:53:27 18 on Schmarbeck Avenue within that block?

11:53:44 19 A. I would say you could -- well, I know  
11:53:46 20 you could safely put three cars abreast, so you  
11:53:49 21 could have a parked car on each side of the street  
11:53:51 22 and one car could safely navigate right down the  
11:53:55 23 middle.

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11:53:56 1 If it's a fire truck or something big, wide,  
11:53:59 2 and I was going to say noisy, sometimes they have  
11:54:04 3 trouble getting down the street. The garbage  
11:54:08 4 trucks and the plow trucks sometimes, when there's  
11:54:10 5 people parked on both sides, they'll have trouble  
11:54:12 6 negotiating the street.

11:54:13 7 Q. Is there any crosswalk or indication on  
11:54:17 8 the road for pedestrians within that block on  
11:54:19 9 Schmarbeck?

11:54:22 10 A. Up at Broadway, after they milled  
11:54:28 11 it -- I don't know what year that was -- with  
11:54:32 12 enough calls to City Hall, they gave us a half  
11:54:35 13 a crosswalk -- a half of paved -- of painted  
11:54:39 14 pavement up at the corner.

11:54:41 15 They gave us, you know, a line -- a white  
11:54:44 16 line where the car could pull to the white line,  
11:54:46 17 but I think that was about it.

11:54:50 18 Q. And that's at the intersection of  
11:54:51 19 Broadway and Schmarbeck?

11:54:52 20 A. Yeah. That's another 200 feet up the  
11:54:55 21 street.

11:54:58 22 Q. What time was it when the red van  
11:55:00 23 pulled up and parked on Schmarbeck?

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11:55:06 1           **A.**    I don't remember the exact time.

11:55:07 2           **Q.**    What drew your attention to the van?

11:55:10 3           **A.**    Well, it pulled up in front of 33, and  
11:55:14 4 Mike popped out of it. Mike Wolfe popped out of  
11:55:18 5 the driver's side. That's what really drew my  
11:55:21 6 attention to it was Mike Wolfe was driving it.

11:55:23 7           **Q.**    Was that the first time you had seen  
11:55:26 8 Mike since he had stopped staying at 33?

11:55:34 9           **A.**    I think I saw him on like the 28th, but  
11:55:37 10 it was like fleeting. Like he just walked down the  
11:55:40 11 street and went in the house. But, yeah, that  
11:55:46 12 was -- that was the first good look I had at him  
11:55:49 13 and like that he was going to be there for a while.

11:55:54 14           **Q.**    What about the red van concerned you?

11:55:59 15           **A.**    It was a couple things. First, six,  
11:56:04 16 eight weeks before, Mike had asked me to cash  
11:56:07 17 a check, and I said, I'm not cashing your check.  
11:56:10 18 I said, take it somewhere and get it cashed. He  
11:56:13 19 said, well, I got no ID.

11:56:15 20           I said, well, how have you been cashing them  
11:56:17 21 so far? And he said, well, I don't want to go  
11:56:19 22 there. And I said, well, tell me. And he said,  
11:56:22 23 I give it to the crack man. I said, well, go give

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12:00:53 1 really said anything. And then when I found out  
12:00:55 2 where he was and I tried to track him down that way  
12:00:57 3 and say, are you going to give me the keys back?  
12:01:00 4 Are you done over here? That didn't work too well  
12:01:04 5 because --

12:01:07 6 Q. Did Mike owe you any rent on January 1st,  
12:01:11 7 2017?

12:01:11 8 A. I don't remember.

12:01:12 9 Q. Did you have a written lease with Mike  
12:01:14 10 Wolfe?

12:01:15 11 A. I had a rental agreement. We had the  
12:01:18 12 same lease with everybody. If it's a Section 8  
12:01:21 13 tenant, we call it a lease. If it's a guy on  
12:01:24 14 month-to-month, we just call it a rental agreement.  
12:01:26 15 But it's the same document.

12:01:28 16 Q. It's reduced to writing --

12:01:28 17 A. Yeah.

12:01:29 18 Q. -- in a document?

12:01:30 19 A. Yeah.

12:01:41 20 Q. The observations you made of the  
12:01:45 21 officer conversing with Mike, that occurred from  
12:01:48 22 the kitchen -- your vantage point in your kitchen  
12:01:54 23 at 37 at the time?

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12:01:55 1           **A.**     Yes.

12:01:55 2           **Q.**     How long did you observe Mike and the  
12:01:57 3 officer conversing from your window?

12:01:59 4           **A.**     I don't remember exactly. And  
12:02:01 5 remember, it's you're glancing out the window,  
12:02:03 6 you're watching, you know, you're trying to keep  
12:02:07 7 on -- I got three little ones. We're trying to  
12:02:09 8 make breakfast.

12:02:10 9           Everybody's moving around the kitchen at  
12:02:12 10 once, and we're trying to -- and I think I told  
12:02:15 11 Earl: As long as he don't put nothing in the back  
12:02:19 12 of that van, don't worry about it. You know, as  
12:02:22 13 long as he's not hauling off the fridge, just don't  
12:02:24 14 worry about it, Earl. It's no biggie. He's  
12:02:26 15 probably just here getting stuff or something.

12:02:28 16           **Q.**     During the period of time that the  
12:02:29 17 officer was conversing with Mike at the curb, how  
12:02:35 18 many police vehicles were present?

12:02:44 19           **A.**     See, now, I'm almost relying on the  
12:02:46 20 video and not my memory. Do you know what I mean  
12:02:48 21 by that?

12:02:49 22           **Q.**     Do you have difficulty remembering the  
12:02:51 23 incident?

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12:02:56 1           A.    I would be delighted to forget it.

12:03:01 2           Q.    Do you have difficulty remembering the  
12:03:04 3 incident?

12:03:08 4           A.    The further I get away from it, the  
12:03:12 5 less of it I remember real clearly. No, I don't  
12:03:15 6 have difficulty remembering it.

12:03:18 7           Q.    Did there come a time when you observed  
12:03:19 8 a second police vehicle park on Schmarbeck in the  
12:03:23 9 vicinity of 33?

12:03:29 10          A.    I don't think I seen them pull up, but  
12:03:33 11 yeah, at some point I became aware now there's two  
12:03:37 12 cars out there.

12:03:37 13          Q.    Where were you when you became aware of  
12:03:39 14 the second car?

12:03:40 15          A.    I was still upstairs.

12:03:43 16          Q.    What point did you choose to exit 37 to  
12:03:48 17 go outside?

12:03:50 18          A.    I don't -- I don't know what -- I don't  
12:03:55 19 know what kind of conversation we were having, me  
12:03:58 20 and Earl and Rachel, but I think when the second  
12:04:04 21 police car got there, I thought: Oh, there's  
12:04:06 22 something serious going on down there.

12:04:10 23          Q.    What, if anything, did you observe

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12:04:11 1 about the interaction between the police and Mike  
12:04:14 2 that caused you to form that opinion?

12:04:16 3           A. I'm pretty sure the first police car  
12:04:25 4 pulled up, the driver got out, walked over, Mike  
12:04:29 5 talked to him.

12:04:29 6           Mike was pointing up at the kitchen window,  
12:04:36 7 and I was like -- Rachel was concerned, because  
12:04:39 8 Rachel noticed that, and she said, what is he  
12:04:42 9 pointing up here for? And I said, I don't know.  
12:04:46 10 Maybe he's telling him where his landlord lives.  
12:04:48 11 I don't know.

12:04:48 12           Or maybe he knew I had left, because he  
12:04:52 13 could have heard me leave that morning, and maybe  
12:04:54 14 he said, well, if he's not back in the back, he's  
12:04:57 15 over there.

12:05:00 16           When the second police car -- okay. They  
12:05:03 17 talked for a minute, and then Mike disappears, and  
12:05:06 18 then the second police car pulls up. And I think  
12:05:09 19 I thought at the time like: Okay. Why are all  
12:05:12 20 these cops converging on the house and Mike just --  
12:05:18 21 what's going on with Mike? Mike just went in the  
12:05:20 22 house.

12:05:20 23           I wasn't sure what conversation had gone on

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12:05:23 1 between Mike, but now more people were coming.

12:05:26 2 Q. Were you able to hear any of the  
12:05:28 3 conversation from where you were?

12:05:29 4 A. No. Just -- no, I was not able to be  
12:05:31 5 a party to hear any of that, but I know he was  
12:05:34 6 pointing up at the house a couple of times.

12:05:37 7 Q. How long did the conversation between  
12:05:40 8 the officers occur before you exited the home?

12:05:48 9 A. I don't know. I'd like to know, but  
12:05:50 10 I don't.

12:05:51 11 Q. Did anyone summon you out of 37?

12:05:58 12 A. No.

12:05:59 13 Q. Did anyone call you and ask you to come  
12:06:03 14 out of 37?

12:06:06 15 A. No.

12:06:14 16 Q. Who was with you when you exited the  
12:06:16 17 house?

12:06:18 18 A. I thought Earl was like right with me  
12:06:20 19 but he wasn't.

12:06:25 20 Q. What did you do when you exited 37?

12:06:29 21 A. I walked over to ask the driver of the  
12:06:33 22 first Tahoe what was going on with Mike.

12:06:38 23 Q. Did you enter the roadway in order to

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12:06:42 1 approach the first Tahoe?

12:06:45 2 A. Yeah.

12:06:48 3 Q. Did you in any manner call out to the  
12:06:50 4 police before you entered the roadway?

12:06:55 5 A. No.

12:07:06 6 Q. At the point that you approached the  
12:07:08 7 first Tahoe in the roadway, were any of the  
12:07:10 8 officers outside of the police vehicles?

12:07:21 9 A. I think when I last looked out the  
12:07:26 10 window or watched or saw on the monitor, there was  
12:07:30 11 one of the policemen was still out of the car.

12:07:33 12 When I left the house, my impression was  
12:07:36 13 that he was still going to be there. That's what  
12:07:41 14 I thought. I said, well, they're still out there.  
12:07:43 15 I'll go talk to them.

12:07:44 16 Q. When you mentioned the monitor, do you  
12:07:46 17 mean that your answer is from both your  
12:07:48 18 recollection and later viewing video?

12:07:54 19 A. No. That's a direct recollection from  
12:07:57 20 the morning. I remember there's still somebody out  
12:08:00 21 of the car. Let's go, Earl.

12:08:03 22 And he had to find his boots, and he had to  
12:08:05 23 get his boots on. Just slide them on. You can tie

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12:08:10 1 them outside. But let's go find out, before they  
12:08:14 2 go, what's going on. Or before Mike gets in deep  
12:08:18 3 shit. Or, you know, before somebody gets in  
12:08:22 4 trouble that maybe ought not to be in no trouble.

12:08:25 5 Q. Had you ever intervened with the police  
12:08:27 6 and Mike prior to this date?

12:08:28 7 A. No. No. I don't do that. I don't  
12:08:31 8 intervene.

12:08:40 9 Q. At some point the first police Tahoe  
12:08:43 10 pulled away?

12:08:46 11 A. I left the house, walked down the  
12:08:49 12 steps, walked out into the street, and then made  
12:08:51 13 a left to walk up to the driver's side.

12:08:55 14 As I was walking up to the vehicle, I said,  
12:08:58 15 can I talk to you? The officer on the left-hand  
12:09:02 16 side, in the passenger seat, a male officer, he  
12:09:06 17 started waving his arms and screaming really loud:  
12:09:09 18 No. We're leaving now. We're leaving now. We're  
12:09:12 19 not talking to anybody.

12:09:14 20 Q. Were you in the roadway when the  
12:09:17 21 officer yelled?

12:09:19 22 A. No. I was in the roadway to the right  
12:09:21 23 of the Tahoe. I was already on the -- my right,

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12:09:27 1 his left. I was not standing in front of the

12:09:29 2 Tahoe, no.

12:09:30 3 Q. Would that have been the driver's side  
12:09:33 4 vehicle -- the driver's side of the Tahoe that you  
12:09:35 5 were on?

12:09:35 6 A. Yeah. Yeah. I was already -- because  
12:09:38 7 I was trying to walk up to the door -- to the  
12:09:41 8 driver's door of the first Tahoe.

12:09:43 9 Q. On the roadway of Schmarbeck?

12:09:46 10 A. Yeah.

12:09:46 11 Q. How long or how much time elapsed from  
12:09:52 12 when you exited 37, to when you approached the  
12:09:55 13 first Tahoe?

12:09:58 14 A. Maybe 14 seconds it takes. I don't  
12:10:03 15 know. I never timed that.

12:10:05 16 The time it takes to leave the front door,  
12:10:07 17 go down the steps. I might have checked the mail.  
12:10:12 18 I don't know. I might have looked in the mailbox  
12:10:14 19 for Rachel. I don't know.

12:10:15 20 Q. Where was the second police vehicle at  
12:10:17 21 the time that you approached the first Tahoe?

12:10:23 22 A. She was directly -- she was to the  
12:10:29 23 passenger side rear. Like diagonal, like behind.

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12:10:35 1 him.

12:10:35 2 Q. Behind the first Tahoe?

12:10:37 3 A. Yeah.

12:10:41 4 Q. After the first Tahoe pulled away, did  
12:10:44 5 you turn your attention to the second vehicle?

12:10:51 6 A. As soon as I heard the guy in there  
12:10:53 7 screaming: I'm not going to talk to anybody --  
12:10:55 8 we're not talking to anybody. We're not talking to  
12:10:57 9 anybody -- as soon as I heard that, I said, oh,  
12:11:00 10 okay. He's not going to talk to nobody. So I just  
12:11:03 11 walked past the Tahoe.

12:11:05 12 As soon as I came around the back of that  
12:11:07 13 Tahoe, I looked over, and I saw the woman in the  
12:11:12 14 other Tahoe parked at the curb, and I said --

12:11:17 15 Q. My question was going to be: Did you  
12:11:19 16 have any conversation with that officer?

12:11:20 17 A. I said, can I speak to you? And she  
12:11:24 18 cocked her head and smiled.

12:11:27 19 Q. Did the officer -- strike that.

12:11:38 20 After the time that you turned and looked at  
12:11:41 21 the second vehicle, had you changed the position of  
12:11:45 22 your body with relation to the vehicle -- that's  
12:11:51 23 already gotten very convoluted. Let me rephrase

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12:11:54 1 that.

12:11:55 2 At the time that you turned your attention  
12:11:57 3 to the second vehicle, where were you positioned on  
12:11:59 4 the roadway in Schmarbeck?

12:12:03 5 A. I want to say I was -- I was -- it  
12:12:05 6 seems like I would have been dead in the middle of  
12:12:07 7 the road facing her.

12:12:09 8 Q. Did you ever approach the second police  
12:12:13 9 vehicle?

12:12:16 10 A. Yeah. I took two steps toward it.  
12:12:18 11 After she smiled at me, I took two steps forward  
12:12:22 12 and looked up.

12:12:33 13 Q. Where was your body positioned in  
12:12:35 14 relation to that second Tahoe?

12:12:41 15 A. I don't understand how to answer that.  
12:12:44 16 I don't understand the question.

12:12:45 17 Q. How was your body oriented to that  
12:12:48 18 Tahoe?

12:12:48 19 What side of the vehicle were you on or  
12:12:51 20 walking towards?

12:12:54 21 MR. DAVENPORT: Well, form. He didn't --  
12:12:57 22 well, you can go ahead and answer.

12:12:58 23 THE WITNESS: The driver's side. The

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12:13:00 1 driver's side. Like I was about even with the  
12:13:05 2 front wheel.

12:13:26 3 **BY MS. HUGGINS:**

12:13:26 4 **Q.** Did the driver of the second Tahoe ever  
12:13:28 5 roll down the window?

12:13:36 6 **A.** I don't know.

12:13:36 7 **Q.** Did that driver ever summons you  
12:13:39 8 towards the vehicle?

12:13:49 9 **A.** I thought her smile was the  
12:13:51 10 acknowledgement that she heard my question and  
12:13:54 11 that she wasn't -- that she was going to be  
12:14:00 12 receptive to speaking to me.

12:14:01 13 I thought when she looked over at me and she  
12:14:04 14 smiled, that that acknowledgement was: Yeah, I'm  
12:14:06 15 here.

12:14:07 16 **Q.** How much time elapsed from when you  
12:14:09 17 began approaching the vehicle, to when you claim  
12:14:12 18 you were struck?

12:14:16 19 **A.** I claim? I'm going to say five seconds  
12:14:32 20 before she crashed into me.

12:14:34 21 **Q.** Did you take any effort to avoid the  
12:14:37 22 vehicle?

12:14:38 23 **A.** Her vehicle?

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12:14:40 1 Q. Correct. Did you take any effort to  
12:14:43 2 avoid the vehicle?

12:14:43 3 A. I didn't know she was moving her  
12:14:47 4 vehicle.

12:15:01 5 Q. What part of your bodies -- or what  
12:15:05 6 part of your body was struck by the vehicle?

12:15:12 7 A. I took two steps around the back of the  
12:15:14 8 Tahoe, I looked up, I saw the car was coming at me,  
12:15:17 9 I put my hands out in front of me, and I closed my  
12:15:20 10 eyes.

12:15:23 11 The next thing I know, I was on the ground  
12:15:25 12 and the back of my head hurt. I don't know.  
12:15:31 13 I don't know if my hands hit, my hips hit. I don't  
12:15:34 14 know.

12:15:36 15 Q. Why did you close your eyes?

12:15:38 16 A. I was scared she was going to hit me  
12:15:40 17 with the car.

12:15:45 18 Q. Did you take any other action to try to  
12:15:47 19 move out of the way?

12:15:49 20 A. There wasn't time to move out of the  
12:16:01 21 way.

12:16:01 22 Q. Where did you experience the pain to  
12:16:04 23 your head?

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12:16:04 1           **A.**     In the back of my head.

12:16:17 2           **Q.**     Do you have any recollection of the  
12:16:21 3 vehicle striking you?

12:16:33 4           **A.**     I have -- I don't have a visual  
12:16:37 5 recollection of it, but I have a recollection in  
12:16:40 6 my head of falling. I remember falling down.  
12:16:44 7 I remember: Oh, Christ. It's the first -- you're  
12:16:48 8 talking to yourself, you know. I remember that.

12:16:58 9           **Q.**     What part of the vehicle struck your  
12:17:00 10 body?

12:17:03 11          **A.**     I don't know. I put my hands out.  
12:17:05 12 That's all.

12:17:12 13          **Q.**     Did you notice any injury to your hands  
12:17:19 14 after you claim the vehicle struck you?

12:17:24 15          **A.**     Like within the first minute? No.  
12:17:28 16 I wasn't --

12:17:29 17          **Q.**     Immediately after.

12:17:30 18          **A.**     After I hit the ground, my head was  
12:17:32 19 hurting so bad, I wasn't paying no attention to  
12:17:37 20 nothing else but the back of my head.

12:17:38 21          **Q.**     Where was your body positioned with  
12:17:40 22 relation to the Tahoe when you landed on the  
12:17:45 23 ground?

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12:17:49 1           **A.**    I don't know when I landed on the  
12:17:52 2 ground, but I know when I opened my eyes where  
12:17:55 3 I was. Like my first recollection after I hit the  
12:17:57 4 ground, I know where I was then.

12:18:01 5           **Q.**    How much period of time elapsed before  
12:18:03 6 you opened your eyes while you were on --

12:18:05 7           **A.**    I don't know.

12:18:06 8           **Q.**    -- the ground?

12:18:07 9           **A.**    I don't know.

12:18:08 10          **Q.**    Where were you when you opened your  
12:18:09 11 eyes?

12:18:10 12          **A.**    I was laying on my back, and when I go  
12:18:15 13 to get up when I'm laying on my back in the street,  
12:18:18 14 I kind of bend up forward, and as I bent up  
12:18:22 15 forward, I looked at my feet, and my feet was up  
12:18:24 16 and underneath the car.

12:18:25 17           And the first thing I thought is: She's  
12:18:29 18 going to run over my legs. So I turned to my left  
12:18:31 19 side, and it looked like a silent movie. It had to  
12:18:39 20 look like a silent movie, because I don't remember  
12:18:42 21 hearing anything, and I like moved my feet like  
12:18:45 22 I was pedaling to get out from underneath the car.

12:18:47 23           And then when I got out from under it, I was

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13:46:01 1 **A.** Or anything else?

13:46:03 2 **Q.** Not anything else.

13:46:04 3 **A.** Not anything else.

13:46:05 4 **Q.** Just the January 1st incident.

13:46:08 5 **A.** No.

13:46:10 6 **Q.** I don't believe I have any further  
13:46:12 7 questions for you. Oh, I do.

13:46:16 8 Sir, do you recall receiving any type of  
13:46:19 9 testing to your head in -- in June of 2009?

13:46:38 10 **A.** I don't remember that far back.

13:46:40 11 **MS. HUGGINS:** Okay. Fair enough.

13:46:42 12 I have no further questions for you.

13:46:43 13 Thank you for your time.

13:46:46 14 **MR. DAVENPORT:** All set.

13:46:47 15 **THE REPORTER:** Will Mr. Davenport be  
13:46:50 16 supplied?

13:46:50 17 **MS. HUGGINS:** He will.

18 **THE REPORTER:** Thank you.

19 (Deposition concluded at 1:46 p.m.)

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1 I hereby CERTIFY that I have read the  
2 foregoing 160 pages, and that except as to those  
3 changes (if any) as set forth in an attached errata  
4 sheet, they are a true and accurate transcript of  
5 the testimony given by me in the above entitled  
6 action on February 6, 2020.

7  
8  
9 -----  
10 JAMES KISTNER  
11  
12  
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22  
23

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1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE )

4

5 I DO HEREBY CERTIFY as a Notary Public in and  
6 for the State of New York, that I did attend and  
7 report the foregoing deposition, which was taken  
8 down by me in a verbatim manner by means of machine  
9 shorthand. Further, that the deposition was then  
10 reduced to writing in my presence and under my  
11 direction. That the deposition was taken to be  
12 used in the foregoing entitled action. That the  
13 said deponent, before examination, was duly sworn  
14 to testify to the truth, the whole truth and  
15 nothing but the truth, relative to said action.

16

17

18

19

-----  
ANNE T. BARONE, RPR,  
Notary Public.

20

21

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**EXHIBIT F**



**VIDEO DEPOSITION  
KARL SCHULTZ**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

-----  
JAMES C. KISTNER,

Plaintiff,

- vs - Civil Action No.  
18-cv-402

THE CITY OF BUFFALO,  
c/o Corporation Counsel,  
BYRON LOCKWOOD, individually and in  
his capacity as Police Commissioner  
of the Buffalo Police Department,  
DANIEL DERENDA, individually and in his  
capacity as Police Commissioner of the  
Buffalo Police Department,  
LAUREN McDERMOTT, individually and  
in her capacity as a Buffalo Police Officer,  
JENNY VELEZ, individually and in her  
capacity as a Buffalo Police Officer,  
KARL SCHULZ, individually and in his  
capacity as a Buffalo Police Officer,  
KYLE MORIARTY, individually and in his  
capacity as a Buffalo Police Officer,  
DAVID T. SANTANA, individually and in his  
capacity as a Buffalo Police Officer,  
JOHN DOE(S), individually and in his/their  
capacity as a Buffalo Police Officer(s),

Defendants.  
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1 Video deposition of **KARL SCHULTZ**,  
2 Defendant, taken pursuant to the Federal Rules of  
3 Civil Procedure, in the offices of JACK W. HUNT &  
4 ASSOCIATES, INC., 1120 Liberty Building, Buffalo,  
5 New York, on February 13, 2020, commencing at  
6 9:05 a.m., before ANNE T. BARONE, RPR, Notary  
7 Public.

8 APPEARANCES: RUPP BAASE  
9 PFALZGRAF & CUNNINGHAM, LLC,  
10 By JILL L. YONKERS, ESQ.,  
11 yonkers@ruppbaase.com and  
12 CHAD DAVENPORT, ESQ.,  
13 davenport@ruppbaase.com,  
14 1600 Liberty Building,  
15 Buffalo, New York 14202,  
16 (716) 854-3400,  
17 Appearing for the Plaintiff.  
18  
19 TIMOTHY A. BALL, ESQ.,  
20 Corporation Counsel,  
21 By MAEVE E. HUGGINS, ESQ.,  
22 Assistant Corporation Counsel,  
23 1137 City Hall,  
Buffalo, New York 14202,  
(716) 851-4334,  
mhuggins@city-buffalo.com,  
Appearing for the Defendants.

19 PRESENT: JAMES KISTNER  
20 LAUREN McDERMOTT  
21 MARC R. REBMANN, Videographer

09:04:45 22 **THE REPORTER:** Usual stipulations for federal  
09:04:47 23 cases?

09:04:48 1           **MS. HUGGINS:** We're going to do read and  
09:04:50 2 sign.

09:04:50 3           **MS. YONKERS:** How long?

09:04:51 4           **MS. HUGGINS:** Can I have 45 days?

09:04:53 5           **MS. YONKERS:** You may.

09:04:53 6           **MS. HUGGINS:** Thank you.

09:04:54 7           **THE REPORTER:** And as far as billing,  
09:04:55 8 Ms. Huggins will be supplied?

09:04:59 9           **MS. YONKERS:** Is that usual in federal?

09:05:01 10          **THE REPORTER:** It is.

09:05:02 11          **MS. YONKERS:** That's what I thought. Yes.

09:05:03 12          **THE REPORTER:** Okay. Thank you.

09:05:03 13

09:06:21 14   **K A R L S C H U L T Z**, 695 Main Street, Buffalo,  
09:06:31 15 New York 14202, after being duly called and sworn,  
09:06:31 16 testified as follows:

09:06:34 17

09:06:34 18           **EXAMINATION BY MS. YONKERS:**

09:06:34 19

09:06:36 20           **Q.** Good morning, Officer Schultz.

09:06:38 21           **A.** Good morning.

09:06:39 22           **Q.** Again, my name is Jill Yonkers, and in  
09:06:42 23 this case, I represent Mr. Kistner. I'm going to

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09:34:19 1 Q. Was there a time when you were working  
09:34:21 2 a different shift?

09:34:22 3 A. Yes.

09:34:22 4 Q. What shift were you working before day  
09:34:24 5 shift?

09:34:25 6 A. I worked the afternoon shift for  
09:34:30 7 roughly a year.

09:34:32 8 Q. And what's the time range for the  
09:34:35 9 afternoon shift?

09:34:36 10 A. 3:30 p.m. to 1:30 a.m.

09:34:41 11 Q. What did you work before afternoons?

09:34:44 12 A. I worked the night shift. 8 p.m. to  
09:34:47 13 6 a.m.

09:34:51 14 Q. Do you remember which shift you were  
09:34:52 15 working in January of 2017?

09:34:55 16 A. The day shift.

09:35:12 17 Q. What's the general geographic area  
09:35:15 18 covered by C District?

09:35:17 19 A. East Ferry and Jefferson. So Jefferson  
09:35:26 20 is the border going to the Cheektowaga border. It  
09:35:31 21 was East Ferry, and then cuts over to Genesee, and  
09:35:34 22 then it kind of gets chopped up by streets going on  
09:35:40 23 the southern part of the district. So I'd say like

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09:35:43 1 William and Clinton area.

09:35:51 2 Q. Does the C District include the street  
09:35:54 3 known as Schmarbeck Avenue?

09:35:56 4 A. Yes, it does.

09:35:57 5 Q. Does it also include the area  
09:36:00 6 encompassing the ECMC campus?

09:36:02 7 A. No, it does not.

09:36:04 8 Q. Which district covers ECMC?

09:36:06 9 A. E.

09:36:08 10 Q. That makes it easy.

09:36:11 11 Generally speaking, when you were working  
09:36:20 12 for the C District, when you begin a shift, how  
09:36:23 13 does the shift start for you?

09:36:26 14 A. Well, you get there a little early to  
09:36:30 15 get -- you know, get ready. We get our gear on,  
09:36:33 16 and then you go to the briefing room, and there the  
09:36:37 17 lieutenants will brief you on, you know, what  
09:36:40 18 happened the day, night prior. You know, if  
09:36:43 19 there's any -- anything changed -- any changes or  
09:36:47 20 anything sent out administratively or departmentally.

09:36:53 21 Q. Could that include orders for the shift  
09:36:56 22 that you're about to undertake?

09:36:58 23 A. Yes.

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09:37:14 1 Q. Can you tell me what you did for  
09:37:16 2 C District as a patrol officer in the car?  
09:37:20 3 What did you do day to day?

09:37:22 4 MS. HUGGINS: Form.

09:37:25 5 THE WITNESS: Responded to calls that I was  
09:37:27 6 dispatched or -- or took. Just normal patrol  
09:37:35 7 duties.

09:37:35 8 BY MS. YONKERS:

09:37:35 9 Q. Okay. What types of calls day to day  
09:37:41 10 could you get while on patrol?

09:37:44 11 A. Excuse me. Anything from domestics to  
09:37:47 12 trespasses to burglaries, robberies, shootings,  
09:37:51 13 homicides.

09:38:02 14 Q. And let's say in the period of time  
09:38:05 15 from -- of 2016 into January of 2017, were you  
09:38:11 16 involved in training any officers at that time?

09:38:15 17 A. From 2016 to 2017? Yes.

09:38:21 18 Q. Okay. Who were you training during  
09:38:25 19 that time?

09:38:25 20 A. In 2016, I honestly couldn't tell you.  
09:38:32 21 January 2000 -- 2017, Officer Kyle Moriarity.

09:38:40 22 Q. And were you giving him field training  
09:38:44 23 similar to what you had gone through?

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09:38:46 1 A. I'd like to think better, but yes.

09:38:49 2 Q. Very good.

09:38:51 3 And how long had Officer Moriarity been  
09:38:59 4 working with you, let's say, before January 1 of  
09:39:04 5 2017?

09:39:10 6 A. Not long. Maybe a couple weeks.

09:39:21 7 Q. Is there a term known as motorized  
09:39:25 8 patrol within the Buffalo Police Department?

09:39:31 9 A. I guess you can call it that.

09:39:32 10 Q. Is that what we're -- you know, what  
09:39:34 11 you're talking about as you're in the car on  
09:39:37 12 patrol?

09:39:37 13 A. Yeah.

09:39:44 14 Q. Okay.

09:39:45 15 A. Yes.

09:39:46 16 Q. Okay. And other than when you were  
09:39:48 17 training Officer Moriarity, are you by yourself in  
09:39:50 18 your car?

09:39:50 19 A. With him?

09:39:51 20 MS. HUGGINS: Form.

09:39:52 21 BY MS. YONKERS:

09:39:52 22 Q. Let's say before you were training him,  
09:39:56 23 are you usually out on calls in your own car by

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09:39:59 1 yourself or is someone with you? How does that  
09:40:04 2 work?

09:40:04 3 **MS. HUGGINS:** Form.

09:40:05 4 **THE WITNESS:** It would, for the most part,  
09:40:07 5 be, yeah, myself in the car, then have a backup or  
09:40:12 6 a cover officer that would be dispatched or would  
09:40:16 7 respond with me.

09:40:17 8 **BY MS. YONKERS:**

09:40:17 9 **Q.** But they would be in a separate car?

09:40:20 10 **A.** Sometimes, yes. Sometimes I would ride  
09:40:23 11 with somebody, depending on the day or the situation.

09:40:26 12 **BY MS. YONKERS:**

09:40:27 13 **Q.** I see. Okay.

09:40:27 14 Did you have a particular vehicle that was  
09:40:28 15 assigned to you in December 2016 and January 2017?

09:40:32 16 **A.** Yes.

09:40:33 17 **Q.** Which car was that?

09:40:36 18 **A.** I couldn't tell you the number of the  
09:40:38 19 vehicle.

09:40:39 20 **Q.** But it's by number?

09:40:40 21 **A.** Yes.

09:40:40 22 **Q.** What type of vehicle was it?

09:40:43 23 **A.** Well, I had -- I had a Charger was

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09:40:46 1 my -- was my normal vehicle, but we also used Chevy  
09:40:57 2 Tahoes as well.

09:40:57 3 Q. Was there a difference in which vehicle  
09:41:00 4 you took depending on the day? How did that work?

09:41:03 5 A. No. It would mainly just be if my --  
09:41:06 6 or the Charger that I used was at the garage  
09:41:09 7 getting serviced, then you would have to take one  
09:41:12 8 of the other vehicles that was left.

09:41:14 9 Q. I see.

09:41:14 10 And I think you told me earlier that at  
09:41:23 11 the -- the briefing that happened at the beginning  
09:41:25 12 of every shift, you could get orders for what was  
09:41:30 13 going to happen on your shift for that day,  
09:41:31 14 correct?

09:41:32 15 A. Correct.

09:41:33 16 Q. And that those would be from the  
09:41:35 17 lieutenants?

09:41:35 18 A. Correct.

09:41:39 19 Q. Does any part of your collective  
09:41:42 20 bargaining agreement govern what you do day to day?

09:41:47 21 MS. HUGGINS: Form.

09:41:52 22 THE WITNESS: That, I'm unsure of.

09:41:54 23 BY MS. YONKERS:

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10:40:55 1 Q. What do you think, before January 1st  
10:41:00 2 of 2017, fewest number of calls you would have gone  
10:41:03 3 out on in a particular shift?

10:41:08 4 A. That could vary.

10:41:10 5 Q. So it's over a ten-hour period, right?

10:41:12 6 A. Yeah.

10:41:12 7 Q. So it could be as few as -- could it be  
10:41:15 8 as few as one?

10:41:18 9 A. I would say no. More than that.  
10:41:22 10 Between maybe five and ten.

10:41:25 11 Q. Would be the fewest.

10:41:27 12 And then what about on the high end?

10:41:33 13 A. 15 plus. 20 plus. Depending on the  
10:41:38 14 day.

10:41:38 15 Q. Do you know how many calls you went out  
10:41:40 16 on on January 1st, 2017, before going to Schmarbeck?

10:41:45 17 A. No, I do not.

10:41:46 18 Q. What about the -- over the course of  
10:41:48 19 the entirety of that day, do you know how many you  
10:41:51 20 went out on?

10:41:52 21 A. No.

10:41:52 22 Q. Do you remember anything about the  
10:41:53 23 calls you went out on before going to Schmarbeck?

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10:41:57 1 A. No.

10:41:57 2 Q. What about the ones after?

10:42:01 3 A. No, I don't.

10:42:09 4 Q. Are you assigned a particular unit

10:42:14 5 number?

10:42:16 6 A. Like my call sign?

10:42:17 7 Q. Yeah, what's your call sign?

10:42:19 8 A. Right now it's Bravo 243.

10:42:24 9 Q. What was it back in January of 2017?

10:42:27 10 A. I believe it was Charlie 230.

10:42:31 11 Q. At the time of January 1st, 2017, would

10:42:35 12 Officer Moriarity have had his own call sign or

10:42:39 13 would he have been working under yours?

10:42:41 14 A. No. He would have been working under

10:42:44 15 mine.

10:42:44 16 Q. In terms of your duties that day, would

10:42:46 17 he have been using the radio for communication at

10:42:48 18 all or would that all have been on you?

10:42:54 19 A. It could have been both. I can't

10:42:57 20 remember if -- it's all on when he or she is

10:43:02 21 comfortable on using the radio.

10:43:06 22 Q. Do you remember going out to Schmarbeck

10:43:09 23 that day?

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10:43:10 1 A. Yes.

10:43:10 2 Q. Do you remember the circumstances that  
10:43:12 3 brought you out to Schmarbeck that day?

10:43:15 4 A. I don't remember the initial -- the  
10:43:19 5 call that was put in. I don't remember, no.

10:43:21 6 Q. What do you remember about going out to  
10:43:24 7 Schmarbeck?

10:43:29 8 A. Just that entire time that we were  
10:43:30 9 there?

10:43:31 10 Q. Start with the first moment. Did you  
10:43:33 11 arrive in the morning?

10:43:35 12 A. I believe so, yes.

10:43:36 13 Q. What do you -- what do you remember  
10:43:38 14 doing upon arrival?

10:43:47 15 A. I believe we spoke with somebody that  
10:43:49 16 was on the street, that lived on the street, and  
10:43:52 17 then as we were leaving, that's when I believe we  
10:43:56 18 came into contact with Mr. Kistner, but I don't --  
10:43:58 19 the details on the -- the call, the incident  
10:44:02 20 before, I don't -- I don't remember any of that.

10:44:04 21 Q. When you say, we spoke with someone on  
10:44:06 22 the street, are you referring to yourself and  
10:44:08 23 Officer Moriarity?

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10:44:11 1 A. Yes.

10:44:11 2 Q. Okay. And did there come a time when  
10:44:14 3 additional officers arrived on Schmarbeck?

10:44:16 4 A. Yes.

10:44:16 5 Q. What -- what led to that?

10:44:19 6 A. I believe they were just covering --  
10:44:25 7 covering our call.

10:44:25 8 Q. What does that mean to be covering  
10:44:27 9 a call?

10:44:27 10 A. Just that they were our backup  
10:44:29 11 officers.

10:44:32 12 Q. Do backup officers always arrive or  
10:44:35 13 does it depend on the call type?

10:44:37 14 A. It depends on the call type.

10:44:41 15 Q. What kind of call types trigger the  
10:44:48 16 arrival of a backup covering officer?

10:44:53 17 A. Well, they try to dispatch at least  
10:44:55 18 two -- two officers to a call. It could be  
10:44:59 19 anything from an alarm, to a traffic stop, to  
10:45:02 20 a domestic. Basically anything you want to have  
10:45:06 21 more than just one car there.

10:45:07 22 Q. And is that something that you decide  
10:45:08 23 or does dispatch decide that?

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10:45:12 1           **A.**    We can call for an extra car or two,  
10:45:14 2           but also dispatch can -- you know, they'll say,  
10:45:17 3           let -- let us get you another car, and they can  
10:45:21 4           also dispatch more than one.

10:45:22 5           **Q.**    Okay. Do you know what happened on  
10:45:24 6           this occasion on January 1st, 2017?

10:45:27 7           **A.**    I don't remember if the backup car was  
10:45:30 8           dispatched or if they had, you know, covered --  
10:45:34 9           taken upon themselves to cover.

10:45:36 10          **Q.**    Okay. You said earlier that as you  
10:45:39 11          were leaving: We came in contact with Mr. Kistner.  
10:45:42 12          What did you mean by that?

10:45:45 13          **A.**    He was walking -- walking out or from  
10:45:50 14          one of the houses, and it was just a simple, you  
10:45:55 15          know, we're leaving. You know, it's -- you know,  
10:45:59 16          it's as simple as that.

10:46:02 17          **Q.**    Did he try to talk to you in any way?

10:46:04 18          **A.**    I don't believe he tried to talk to us.

10:46:06 19          **Q.**    Were you driving the vehicle, or were  
10:46:08 20          you the passenger in the vehicle?

10:46:12 21          **A.**    I -- I want to say I was driving, but  
10:46:17 22          I'm -- I'm not sure.

10:46:20 23          **Q.**    What about the -- the covering

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10:46:23 1 officers? Who arrived as your backup?

10:46:26 2 **A.** Officer Velez and McDermott.

10:46:34 3 **Q.** Do you remember how you reached the

10:46:36 4 decision that it was time to leave the scene?

10:46:46 5 **A.** I think after we had completed the --

10:46:49 6 the call that we were sent there for, and that's

10:46:53 7 when we, you know, had -- we try not to, you know,

10:46:58 8 stay stationary, you know, if we don't need to. If

10:47:01 9 the call is completed, then, you know, we move

10:47:04 10 about our day and get back on actively patrolling.

10:47:07 11 **Q.** Okay. And in this case, where was

10:47:10 12 Mr. Kistner in relation to your vehicle?

10:47:14 13 **MS. HUGGINS:** Form.

10:47:18 14 **THE WITNESS:** He was on the -- the passenger

10:47:22 15 side, but I'm -- I'm not sure where he went from

10:47:25 16 there, if it was in front or behind. I'm not sure.

10:47:27 17 **BY MS. YONKERS:**

10:47:27 18 **Q.** In thinking about that now, since he

10:47:29 19 was on the passenger side, were you closer to him

10:47:32 20 or was Officer Moriarity?

10:47:34 21 **A.** I can't remember if I was passenger or

10:47:35 22 driver.

10:47:36 23 **Q.** Okay. That's okay.

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10:47:39 1 Did Mr. Kistner --

10:47:41 2 **A.** I was passenger. Sorry.

10:47:42 3 **Q.** You remember that now?

10:47:46 4 **A.** Yes.

10:47:46 5 **Q.** Okay. Did you -- did Mr. Kistner ask  
10:47:52 6 you if he could talk with you at all?

10:47:53 7 **A.** That, I don't remember.

10:47:59 8 **Q.** Does Officer Moriarity then pull the  
10:48:02 9 car away?

10:48:04 10 **A.** I believe so, yes.

10:48:05 11 **Q.** Do you know, at that time, were you on  
10:48:07 12 your way to another call?

10:48:10 13 **A.** At that time I -- I believe so. That,  
10:48:13 14 or, you know, assisting another officer. I believe  
10:48:16 15 so.

10:48:17 16 **Q.** And what caused you to -- what happened  
10:48:21 17 next?

10:48:22 18 **A.** After we had attempted to -- to pull  
10:48:25 19 away?

10:48:30 20 I saw the gentleman going up to Officer  
10:48:33 21 McDermott and Officer Velez's vehicle, and that's  
10:48:37 22 when I told Officer Moriarity to stop the vehicle  
10:48:41 23 so that we could observe -- we didn't want to leave

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10:48:45 1 officers alone, so I said, stop the vehicle, and  
10:48:48 2 observed the interaction.

10:48:51 3 Q. Who was driving the Velez and McDermott  
10:48:53 4 vehicle?

10:48:54 5 A. I believe it was Officer McDermott.

10:49:00 6 Q. And when you stopped the car to  
10:49:03 7 observe, what was your body position? Were you  
10:49:05 8 looking through mirrors? Did you turn around?  
10:49:07 9 Tell me about that.

10:49:08 10 A. I was in the passenger side, so I was  
10:49:10 11 looking into the driver's side mirror, and I was  
10:49:15 12 able to observe the interaction in its entirety.

10:49:21 13 Q. And when you say -- do you mean the  
10:49:23 14 driver's side mirror or the passenger side mirror?

10:49:26 15 A. No, I couldn't see from my passenger  
10:49:28 16 side. I was observing only through the driver's  
10:49:33 17 side mirror.

10:49:33 18 Q. And how was Officer Moriarity observing  
10:49:38 19 the interaction?

10:49:38 20 A. Excuse me. He was in the driver's  
10:49:41 21 seat, and he was also looking in the driver's side  
10:49:43 22 mirror.

10:49:46 23 Q. What did you observe?

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10:49:49 1           **A.**     At that time I had observed Officer  
10:49:54 2 McDermott and Velez attempt to -- to leave. Excuse  
10:50:03 3 me. They abruptly stopped. I observed Mr. Kistner  
10:50:07 4 was very close to the vehicle and contact was made  
10:50:14 5 with the vehicle. The driver's side mirror.

10:50:29 6           **Q.**     What's the approximate size of the  
10:50:31 7 driver's side mirror of the vehicle that you were  
10:50:32 8 using to observe all this?

10:50:37 9           **A.**     I don't want to -- you know, I don't  
10:50:40 10 know how -- how big the Tahoe mirrors are.

10:50:43 11           **Q.**     But it was a Chevy Tahoe?

10:50:44 12           **A.**     It was a Chevy Tahoe, yes.

10:50:46 13           **Q.**     Was that one of the new ones that came  
10:50:48 14 into place?

10:50:50 15           **A.**     I -- I would have to -- to see. I'm  
10:50:53 16 not sure if it was a 2014 or '15.

10:51:03 17           **Q.**     And to your knowledge, do the police  
10:51:04 18 vehicles have any kind of enhanced mirrors?

10:51:06 19           You know how back in the day you could get  
10:51:08 20 bigger mirrors on your personal vehicle?

10:51:11 21           **A.**     Yeah, I know what you're speaking of,  
10:51:16 22 but no, I don't believe -- I would have to see the  
10:51:19 23 mirror, but I don't believe there's any -- you

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10:51:21 1 know, like the cheater mirrors, the circular ones,

10:51:25 2 I don't -- I don't believe so.

10:51:32 3 Q. And the -- the action that you  
10:51:34 4 observed, you saw the McDermott/Velez vehicle stop?

10:51:38 5 A. Yes.

10:51:41 6 Q. And the contact happened after they  
10:51:43 7 stopped?

10:51:43 8 A. Yes.

10:51:44 9 Q. Was Mr. Kistner still on his feet when  
10:51:50 10 they stopped their car?

10:51:51 11 MS. HUGGINS: Form.

10:51:51 12 THE WITNESS: Yes.

10:51:53 13 BY MS. YONKERS:

10:51:56 14 Q. When you say you saw Mr. Kistner close  
10:51:58 15 to the vehicle, how close are we talking about?

10:52:03 16 A. Less than a foot. From my -- my view  
10:52:07 17 in the mirror, less -- I would say less than  
10:52:10 18 a foot.

10:52:11 19 Q. And what part of the car was he closest  
10:52:14 20 to?

10:52:15 21 A. He was closest to the -- where the door  
10:52:21 22 opens on the Tahoe, like the front fender, driver's  
10:52:24 23 side mirror.

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10:52:25 1 Q. And when you say contact was made with  
10:52:29 2 the vehicle, what do you mean by that?

10:52:32 3 A. Like I said, you know, from my vehicle  
10:52:37 4 and the driver's side mirror, it looked like he had  
10:52:43 5 reached his hand out, touching the vehicle, and  
10:52:54 6 they -- like I said, they -- they had abruptly  
10:52:56 7 stopped, he reached his hand out, and then he went  
10:52:59 8 to the ground.

10:53:00 9 Q. And just so the record is clear, you  
10:53:03 10 were gesturing with your left hand. Did you see  
10:53:05 11 him reaching his left hand out, or is that just  
10:53:08 12 a -- a natural reaction you're having?

10:53:10 13 A. Just me replaying in my head to try to  
10:53:13 14 think. I don't know which -- which hand he used,  
10:53:15 15 but just from my recollection, one of his hands was  
10:53:19 16 reached out. I'm not sure if it was his left or  
10:53:21 17 right.

10:53:21 18 Q. Are you left- or right-handed?

10:53:23 19 A. I am right-handed.

10:53:24 20 Q. Did Mr. Kistner's hand come in contact  
10:53:29 21 with the Velez/McDermott vehicle?

10:53:31 22 A. I believe so.

10:53:32 23 Q. And did you see him take any action

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10:53:38 1 other than put his arm out?

10:53:43 2           **A.**    He took no, I guess, evasive action  
10:53:49 3 to -- to attempt to not get hit.

10:53:54 4           **Q.**    Based on your observation and thinking  
10:53:57 5 about it now, do you believe that Mr. Kistner came  
10:54:01 6 into contact with the vehicle or the vehicle came  
10:54:04 7 in contact with him?

10:54:06 8           **A.**    I believe that he came into contact  
10:54:08 9 with the vehicle.

10:54:09 10          **Q.**    What makes you think that?

10:54:10 11          **A.**    Because like I said, from my view,  
10:54:14 12 I had saw that the vehicle had stopped abruptly,  
10:54:18 13 and then that second later is when his hand or arm  
10:54:26 14 made contact with the vehicle. Split second.

10:54:30 15          **Q.**    So it was fast?

10:54:31 16          **A.**    It was very fast.

10:54:32 17          **Q.**    So from the time -- how much time do  
10:54:34 18 you think passed from the time the vehicle stopped,  
10:54:37 19 till you saw Mr. Kistner on the ground?

10:54:40 20          **A.**    Seconds.

10:54:41 21          **Q.**    Did you see any part of his body other  
10:54:45 22 than his hand come in contact with the police  
10:54:47 23 vehicle?

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10:54:51 1 **A.** I -- I don't recall. I don't remember.

10:54:53 2 **Q.** You don't remember if his -- his body  
10:54:56 3 came in contact, you know, his torso came in  
10:54:58 4 contact with the car or the vehicle?

10:55:00 5 **A.** No.

10:55:02 6 **Q.** What was his body position after the  
10:55:05 7 collision?

10:55:07 8 **A.** He was laying down on the street, on  
10:55:10 9 the driver's side of the vehicle, I believe on  
10:55:15 10 his -- on his back.

10:55:16 11 **Q.** Was his head positioned more toward  
10:55:20 12 your vehicle or more toward the opposite end of the  
10:55:24 13 street?

10:55:25 14 **MS. HUGGINS:** Form.

10:55:26 15 **THE WITNESS:** That, I don't know.

10:55:27 16 **BY MS. YONKERS:**

10:55:27 17 **Q.** Was he parallel with where the -- the  
10:55:32 18 street ran or perpendicular to the street?

10:55:34 19 **MS. HUGGINS:** Form.

10:55:41 20 **THE WITNESS:** I -- I don't want to say one  
10:55:43 21 thing and it was the other. I honestly don't  
10:55:44 22 remember.

10:55:45 23 **BY MS. YONKERS:**

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10:55:45 1 Q. Do you remember anything about what  
10:55:47 2 Mr. Kistner was wearing that day?

10:55:48 3 A. No.

10:55:51 4 Q. Do you remember what the weather was  
10:55:52 5 like that day?

10:55:56 6 A. Cold.

10:55:57 7 Q. Were the roads clear?

10:55:59 8 A. For the most part, I believe so.

10:56:02 9 Q. Have there ever been occasions where  
10:56:04 10 you've gone out on a call during the wintertime and  
10:56:07 11 you've asked for any kind of snow or ice removal  
10:56:12 12 services? Anything like that?

10:56:13 13 A. Yes.

10:56:13 14 Q. What -- under what circumstances?

10:56:17 15 A. It would be either if we, you know, in  
10:56:22 16 the police vehicle had slipped, say -- you know,  
10:56:25 17 say, you need to get a plow over here to salt, or  
10:56:27 18 there was an accident that had happened from, say,  
10:56:32 19 ice or snow, so, you know, the plows will come over  
10:56:35 20 and give it a good salting.

10:56:37 21 Q. Do you remember doing that on this  
10:56:39 22 occasion, January 1st, 2017?

10:56:41 23 A. No, I don't recall doing that.

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10:56:43 1 Q. So what happened after you observed  
10:56:45 2 Mr. Kistner on the street, what happened next?

10:56:52 3 A. I exited my vehicle, and we walked back  
10:56:57 4 to check on Mr. Kistner, just to kind of assess his  
10:57:05 5 condition.

10:57:06 6 Q. And were -- by the time you walked  
10:57:09 7 back -- I guess let me ask you this first: How far  
10:57:11 8 away from the collision area was your vehicle?

10:57:15 9 MS. HUGGINS: Form.

10:57:17 10 THE WITNESS: I'd say --

10:57:20 11 BY MS. YONKERS:

10:57:20 12 Q. You can do it by feet, car lengths.  
10:57:22 13 However it's --

10:57:23 14 A. I would say maybe two, three car  
10:57:27 15 lengths at the most.

10:57:28 16 Q. And as you're walking back to the --  
10:57:33 17 the scene of the collision, what were Officers  
10:57:36 18 Velez and McDermott doing?

10:57:40 19 A. That -- that, I don't remember.

10:57:42 20 Q. Had they gotten out of their vehicle by  
10:57:44 21 the time you got to Mr. Kistner?

10:57:47 22 A. I -- I believe so. Either that or  
10:57:49 23 they -- they were just getting out.

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10:57:51 1 Q. Okay. And what happened next?

10:57:55 2 A. That's, again, we -- you know, he was  
10:57:57 3 alert, so we were -- assessed the situation, him  
10:58:01 4 primarily, and made sure that, you know, he was  
10:58:10 5 okay. That was the initial thing. And then where  
10:58:13 6 to go from there.

10:58:15 7 Q. How did you make sure he was okay?  
10:58:17 8 What do you mean by that?

10:58:19 9 A. We gave him a visual, you know, check,  
10:58:23 10 make sure that there's no bleeding; no, you know,  
10:58:26 11 head wounds.

10:58:31 12 Q. Was he saying anything at the time?

10:58:34 13 A. He was, because he was alert.

10:58:37 14 Q. What was he saying?

10:58:37 15 A. I don't -- I honestly don't remember  
10:58:40 16 exactly what he was saying.

10:58:41 17 Q. Did he say anything about any part of  
10:58:43 18 his body hurting him?

10:58:46 19 A. Not that I can recall, no.

10:58:49 20 Q. Is that something that you would take  
10:58:51 21 into account as part of your assessment?

10:58:53 22 A. Yes.

10:58:54 23 Q. Did anyone ask Mr. Kistner any

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10:58:58 1 questions at that time?

10:59:01 2 **A.** That, I don't know. I don't -- I don't  
10:59:03 3 believe so.

10:59:04 4 Maybe, you know, are you okay? Can you  
10:59:07 5 move? Can you, you know --

10:59:09 6 **Q.** But sitting here today, you don't  
10:59:11 7 remember his responses?

10:59:12 8 **A.** No.

10:59:12 9 **Q.** And that would have been typical  
10:59:14 10 protocol, to ask the individual: Are you okay?  
10:59:17 11 Do you -- you know --

10:59:18 12 **A.** Yes. Just to get an initial  
10:59:20 13 assessment.

10:59:20 14 **Q.** Who was the person asking the  
10:59:22 15 questions?

10:59:23 16 **MS. HUGGINS:** Form.

10:59:29 17 **THE WITNESS:** I'm not sure at the time.

10:59:30 18 **BY MS. YONKERS:**

10:59:31 19 **Q.** Since there's four officers out there  
10:59:33 20 at this point in time, how do you figure out -- who  
10:59:37 21 takes the lead?

10:59:42 22 **A.** I guess it's just -- I believe, at that  
10:59:49 23 time, I took the lead, you know, in assessing, and

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10:59:54 1 I believe I may have been the one asking questions,  
10:59:56 2 but again, I don't -- I'm not a hundred percent  
10:59:58 3 certain.

11:00:00 4 So I believe after that moment, I had --  
11:00:04 5 I had taken the lead.

11:00:06 6 Q. Were you the senior -- the person with  
11:00:08 7 the most seniority at the scene, do you know?

11:00:13 8 A. Yes. Yes, I was.

11:00:14 9 Q. So what do you remember after questions  
11:00:16 10 were asked of Mr. Kistner and he may have given  
11:00:20 11 responses? What do you remember happening next?

11:00:22 12 A. At that time we had gotten him to his  
11:00:29 13 feet and escorted him to our police vehicle,  
11:00:34 14 because he was alert and able to -- to be mobile --  
11:00:37 15 mobile. Again, to, you know, assess the situation  
11:00:44 16 as to where we need to go from there.

11:00:46 17 Q. Were his feet ever under the  
11:00:52 18 Velez/McDermott vehicle?

11:00:53 19 A. That, I don't remember.

11:00:56 20 Q. Did you ask him if he had been taking  
11:00:57 21 any medication?

11:01:01 22 A. At some point I may have. I don't know  
11:01:05 23 if it was, you know, right there or in the vehicle.

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11:01:08 1 I'm not -- I'm not certain when it was asked.

11:01:11 2 **Q.** Did you ask him if he had hit his head  
11:01:14 3 in any way as a result of the collision?

11:01:17 4 **A.** Not from the collision, but from the  
11:01:20 5 ground.

11:01:20 6 **Q.** Okay. Well, that was the result of the  
11:01:22 7 collision, right? He went to the ground?

11:01:24 8 **MS. HUGGINS:** Form.

11:01:24 9 **THE WITNESS:** He went -- when he was on the  
11:01:26 10 ground, that's why I asked, you know, just to look,  
11:01:30 11 an assessment, like I said, to make sure that there  
11:01:33 12 was no, you know, head wound that was bleeding, you  
11:01:36 13 know, needing stitches or, you know, like brain  
11:01:40 14 injury. Anything, you know.

11:01:41 15 **BY MS. YONKERS:**

11:01:42 16 **Q.** Do you get training on recognizing  
11:01:43 17 signs of head injuries as part of your work?

11:01:49 18 **A.** Excuse me. I would say yes, but not,  
11:01:53 19 you know, like in detail. Not that I can diagnose  
11:01:56 20 or any of that.

11:01:57 21 **Q.** When's the last time you had any kind  
11:01:59 22 of training with respect to assessing head injuries  
11:02:01 23 before January 1st of 2017?

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11:02:04 1 A. That, I couldn't tell you.

11:02:05 2 Q. Do you yourself have any medical  
11:02:07 3 training or emergency technician training?

11:02:10 4 A. Just what was given in the academy and  
11:02:13 5 in the military. You know, certain just annual  
11:02:16 6 updates.

11:02:16 7 Q. Do you get any kind of first aid or CPR  
11:02:22 8 training?

11:02:24 9 A. We do in the academy, yes.

11:02:26 10 Q. But you hadn't had that since you left  
11:02:28 11 the academy?

11:02:30 12 A. Correct.

11:02:34 13 Q. Was Mr. Kistner holding any part of his  
11:02:36 14 body while he was on the ground?

11:02:38 15 A. That, I don't remember.

11:02:40 16 Q. How long was he on the ground before  
11:02:42 17 you got him to his feet?

11:02:48 18 A. That, I'm not sure.

11:02:51 19 Q. Do you let someone who has been in an  
11:02:54 20 accident sit for any length of time before you ask  
11:03:00 21 them to get to their feet?

11:03:02 22 MS. HUGGINS: Form.

11:03:02 23 THE WITNESS: Usually if they're alert and

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11:03:04 1 there's no signs of a visible head injury, then no.  
11:03:10 2 We'll -- we'll escort them, you know, assist them  
11:03:12 3 to their feet or, you know, assist them to a safer  
11:03:15 4 location to sit down, instead of having them in the  
11:03:17 5 middle of the street or, you know, wherever it may  
11:03:20 6 be.

11:03:20 7 **BY MS. YONKERS:**

11:03:21 8 **Q.** And in this particular instance, how  
11:03:24 9 much assistance did you have to give Mr. Kistner to  
11:03:26 10 get him to his feet?

11:03:29 11 **A.** You want -- you never really want just  
11:03:34 12 one person assisting somebody, you know, to their  
11:03:35 13 feet, if you can help it, so I -- I believe me and  
11:03:38 14 Officer Moriarity assisted him to his feet.

11:03:41 15 **Q.** When you assisted him to his feet, did  
11:03:43 16 you put him in handcuffs?

11:03:46 17 **A.** At some point we did. I'm not sure if  
11:03:49 18 it was on the ground or standing up.

11:03:51 19 **Q.** What would be typical in a situation  
11:03:52 20 like this? Would you put handcuffs on someone on  
11:03:55 21 the ground?

11:03:56 22 **MS. HUGGINS:** Form.

11:03:57 23 **THE WITNESS:** It would depend. Like I said,

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11:04:01 1 I can't remember if we did on the ground or  
11:04:03 2 standing up.

11:04:03 3 **BY MS. YONKERS:**

11:04:04 4 **Q.** But certainly before he was escorted to  
11:04:06 5 your vehicle, he was in handcuffs.

11:04:07 6 **A.** I believe so, yes.

11:04:08 7 **Q.** Who put the handcuffs on?

11:04:12 8 **A.** That, I can't remember.

11:04:12 9 **Q.** Would it have been you or Officer  
11:04:15 10 Moriarity?

11:04:15 11 **A.** Most likely.

11:04:17 12 **Q.** Why do you say that?

11:04:18 13 **A.** Because we were the ones who had  
11:04:21 14 assisted him to the feet -- to his feet, and  
11:04:24 15 I don't believe that Officer McDermott or Velez had  
11:04:28 16 any physical, you know, hands on with him right  
11:04:33 17 there.

11:04:33 18 **Q.** Okay. Sorry. Were you done with your  
11:04:35 19 answer?

11:04:35 20 **A.** Yes.

11:04:35 21 **Q.** I didn't mean to cut you off.

11:04:37 22 And at that time, was there any discussion  
11:04:40 23 up and to the time -- I'm sorry -- from the time

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11:04:45 1 you walked back to the vehicle, to the time you  
11:04:47 2 have Mr. Kistner up and are walking him back to  
11:04:49 3 your vehicle, among the officers about what  
11:04:51 4 happened?

11:04:54 5 **A.** I don't believe so. I'm unsure of  
11:04:58 6 that.

11:04:58 7 **Q.** What was Officer Moriarity's reaction  
11:05:00 8 to watching what happened?

11:05:02 9 **MS. HUGGINS:** Form.

11:05:07 10 **THE WITNESS:** His like physical reaction  
11:05:10 11 or --

11:05:10 12 **BY MS. YONKERS:**

11:05:11 13 **Q.** Anything you remember. Physical, if he  
11:05:15 14 said anything.

11:05:16 15 **MS. HUGGINS:** Form.

11:05:16 16 **THE WITNESS:** I don't want to put words in  
11:05:18 17 his mouth. I don't -- I don't -- I honestly don't  
11:05:21 18 remember exactly what he said.

11:05:21 19 **BY MS. YONKERS:**

11:05:21 20 **Q.** What was your understanding of what he  
11:05:23 21 said?

11:05:23 22 **MS. HUGGINS:** Form.

11:05:23 23 **THE WITNESS:** Something to the effect of:

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11:05:29 1 This dude just pushed off, or, you know, hit the  
11:05:36 2 police -- hit their vehicle. Something to that  
11:05:39 3 effect. I don't know the exact, but it was  
11:05:41 4 something to that --

11:05:42 5 **BY MS. YONKERS:**

11:05:42 6 **Q.** To that effect?

11:05:43 7 **A.** Yes.

11:05:44 8 **Q.** Okay. Okay. And when you got to  
11:05:46 9 the -- the area where Officers Velez and McDermott  
11:05:48 10 were getting out of their car, did they say  
11:05:52 11 anything?

11:05:55 12 **A.** I'm not sure.

11:05:57 13 **Q.** Did you say anything?

11:05:58 14 **A.** I don't believe I said anything to  
11:06:03 15 them, but again, I'm not sure too. I know I was  
11:06:08 16 more focused on Mr. Kistner laying in the -- in the  
11:06:09 17 street.

11:06:10 18 **Q.** Why did you put him in handcuffs? Or  
11:06:12 19 why did someone put him in handcuffs?

11:06:14 20 **A.** For something like that, that's -- that  
11:06:16 21 situation, you know, is very unique, but per MOP,  
11:06:21 22 we were taking him back to our police vehicle, so  
11:06:24 23 you need to -- they need to be handcuffed when

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11:06:28 1 being placed inside the rear of a police vehicle.

11:06:32 2 Q. Were you taking him into custody?

11:06:35 3 A. He was not free to -- to leave, but at  
11:06:38 4 that point, we were still assessing what exactly we  
11:06:41 5 were going -- what our actions were going to be  
11:06:43 6 moving forward.

11:06:44 7 Q. You said that this was a -- a unique  
11:06:47 8 situation. What do you mean by that?

11:06:49 9 THE WITNESS: I guess any situation that we  
11:06:53 10 come in contact with can be unique, but when you --  
11:06:56 11 you know, when you go to a call, you're not  
11:06:58 12 expecting -- you know, you never expect it to go  
11:07:03 13 one way and then it goes the other. You know, it's  
11:07:06 14 very fluid.

11:07:06 15 So I guess every situation is unique, but,  
11:07:09 16 you know, for this one, just didn't see, you know,  
11:07:15 17 this playing out, I guess.

11:07:18 18 Can I use the restroom, please?

11:07:20 19 MS. YONKERS: Oh, yes. Absolutely. We can  
11:07:22 20 take a break.

11:07:22 21 (A recess was then taken at 11:06 a.m.)

11:18:22 22 (On the record at 11:17 a.m.)

11:18:22 23 BY MS. YONKERS:

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11:18:29 1           **Q.**     Officer Schultz, when we last left off,  
11:18:32 2     you were talking about kind of the postcollision  
11:18:37 3     activities on the scene on Schmarbeck, correct?

11:18:39 4           **MS. HUGGINS:**   Form.

11:18:41 5           **BY MS. YONKERS:**

11:18:41 6           **Q.**     Before you got Mr. Kistner to his feet,  
11:18:46 7     did you do any kind of mental health assessment on  
11:18:48 8     him?

11:18:50 9           **A.**     I don't believe we did one, you know,  
11:18:53 10    there. I think it was more physical assessment at  
11:18:57 11    that point to make sure that he was okay.

11:18:59 12          **Q.**     And when you escorted him to your  
11:19:03 13    vehicle, which was a -- a little distance away, who  
11:19:05 14    was with you?

11:19:06 15          **A.**     I believe it was Officer Moriarity.

11:19:11 16          **Q.**     Excuse me. What did Officers Velez and  
11:19:15 17    McDermott do at the time?

11:19:16 18          **A.**     That, I'm not sure.

11:19:18 19          **Q.**     What was your next step in your  
11:19:20 20    process?

11:19:23 21          **A.**     I believe, at that time, just further  
11:19:26 22    assessing that situation. I'm not sure if I spoke  
11:19:29 23    with Officers McDermott and Velez at that time, but

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11:19:36 1 assessing Mr. Kistner and where we were going to go  
11:19:40 2 from there.

11:19:40 3 Q. Was he in your vehicle when you were  
11:19:42 4 further assessing him or was he outside of your  
11:19:44 5 vehicle?

11:19:45 6 A. Both.

11:19:47 7 Q. What kind of assessment did you do with  
11:19:50 8 him outside of your vehicle?

11:19:51 9 A. Outside, that was just more the  
11:19:53 10 physical assessment. You know, like I said, making  
11:19:56 11 sure that he was able to walk, move his fingers,  
11:19:58 12 you know, feet. His -- you know, make sure there  
11:20:02 13 was no visible blood or, you know, bumps, bruises.

11:20:06 14 And then we placed him in our vehicle, and  
11:20:08 15 then at that point, from what we had observed and  
11:20:14 16 further speaking with him, that's when it turned  
11:20:17 17 from the physical assessment to the mental health  
11:20:20 18 assessment.

11:20:20 19 Q. And it was just you and Officer  
11:20:23 20 Moriarity performing the -- these later physical  
11:20:26 21 assessments and the mental assessment?

11:20:27 22 MS. HUGGINS: Form.

11:20:28 23 THE WITNESS: Before we got to the hospital,

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11:20:30 1 yes, I believe so.

11:20:33 2 **BY MS. YONKERS:**

11:20:33 3 **Q.** Because he's in -- he's in your car at  
11:20:35 4 this point, right?

11:20:36 5 **A.** I -- I believe so, yes.

11:20:37 6 **Q.** Did he have any difficulty putting his  
11:20:39 7 feet inside your vehicle? Did you have to assist  
11:20:43 8 him to get in?

11:20:44 9 **A.** That, I'm not sure of. I don't believe  
11:20:47 10 so, but I'm -- I'm not a hundred percent.

11:20:49 11 **Q.** And were you the one to put him into  
11:20:52 12 the vehicle or did Officer Moriarity do that?

11:20:54 13 **A.** I'm not sure.

11:20:55 14 **Q.** Did he say anything from the time he's  
11:20:57 15 up onto his feet again, to the time he's sitting  
11:21:00 16 down at your car, did he say anything?

11:21:04 17 **A.** That, I don't remember.

11:21:05 18 **Q.** Did you read him his rights at all up  
11:21:09 19 to this point in time?

11:21:10 20 **A.** No, I don't believe so.

11:21:11 21 **Q.** He wasn't arrest -- under arrest for  
11:21:14 22 anything, correct?

11:21:14 23 **A.** At that time, no.

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11:21:16 1 Q. What do you remember happening next?

11:21:20 2 A. Some -- some point after that, I had  
11:21:23 3 contacted Lieutenant McHugh and advised him of the  
11:21:28 4 situation, as to what was going on.

11:21:35 5 And that is when, with his recommendation,  
11:21:40 6 we had come to the conclusion that we were going  
11:21:44 7 to -- excuse me -- take Mr. Kistner up to ECMC for  
11:21:47 8 a physical evaluation -- excuse me -- but also to  
11:21:51 9 charge him with criminal mischief to the police  
11:21:56 10 vehicle.

11:21:56 11 Q. Was Lieutenant McHugh -- were you in  
11:21:59 12 contact with him by radio, phone, or did he come  
11:22:02 13 down in person?

11:22:03 14 A. No. It was only the phone call.

11:22:10 15 Q. When you went -- taking you back  
11:22:15 16 a little bit, when you see the collision happen,  
11:22:17 17 did Officers Velez or McDermott call you guys back,  
11:22:20 18 or did you see what happened and come back?

11:22:22 19 MS. HUGGINS: Form.

11:22:22 20 THE WITNESS: No. We -- myself and Officer  
11:22:26 21 Moriarity had observed the entire situation, so we  
11:22:32 22 had -- excuse me -- we had got out immediately and  
11:22:35 23 had walked back to Officer Velez and McDermott's

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11:22:39 1 vehicle.

11:22:45 2 **BY MS. YONKERS:**

11:22:45 3 **Q.** Had you and Officer Moriarity put your  
11:22:48 4 seat belts on before, as you were leaving the  
11:22:52 5 scene, or before you left initially?

11:22:55 6 **A.** That, I don't recall.

11:22:57 7 **Q.** Do you remember having to take your  
11:22:59 8 seat belt off or Officer Moriarity take his off to  
11:23:03 9 get out of your car?

11:23:04 10 **A.** I -- no, I don't believe so.

11:23:11 11 **Q.** How long of a conversation did you have  
11:23:13 12 with Lieutenant McHugh?

11:23:17 13 **A.** It was a couple minutes. Maybe a few  
11:23:21 14 minutes. It wasn't -- it wasn't too long.

11:23:24 15 **Q.** Is there any reason why you called him  
11:23:26 16 on the phone versus using the radio channel?

11:23:30 17 **A.** Yeah. I didn't want to tie up the  
11:23:31 18 radio, meaning continue to go back and forth over  
11:23:34 19 the radio, tying it up if another call came out and  
11:23:38 20 other officers needed to use it, so I just called  
11:23:42 21 his personal cell phone, you know, to advise him of  
11:23:46 22 the situation.

11:23:47 23 **Q.** Do you remember your words sitting here

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11:23:51 1 today?

11:23:51 2           **A.** I had just told him what we observed.  
11:23:55 3 I had explained to him that, you know, from my  
11:23:58 4 vantage point, Officer McDermott and Velez did not  
11:24:03 5 strike the individual.

11:24:04 6           That the individual, you know, had stuck his  
11:24:08 7 hand out, coming into contact with the police  
11:24:12 8 vehicle, and that there was damage to the mirror.

11:24:19 9           So at that point, you know, we had  
11:24:21 10 determined that he did not need to come out,  
11:24:23 11 internal affairs did not need to come out, and that  
11:24:25 12 it was more of a criminal instead of an accident  
11:24:29 13 call.

11:24:32 14           And that's when we made the determination to  
11:24:36 15 take Mr. Kistner up to ECMC for further evaluation.

11:24:47 16           **Q.** When did you see the damage to the  
11:24:50 17 mirror?

11:24:53 18           **A.** I don't remember if it was on  
11:24:55 19 Schmarbeck or if it was at ECMC.

11:24:57 20           **Q.** What do you remember sitting here  
11:24:59 21 today? What kind of damage was there?

11:25:02 22           **A.** I don't recall the extent of the damage  
11:25:04 23 to the mirror.

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11:25:04 1 Q. Was the mirror hanging off?

11:25:07 2 A. I don't -- I honestly don't remember.

11:25:10 3 Q. Did Officers Velez or McDermott

11:25:13 4 complain about the functionality of their door

11:25:16 5 or window at that time?

11:25:17 6 A. I believe she made a comment about

11:25:20 7 the -- the mirror itself.

11:25:20 8 Q. Which --

11:25:23 9 A. The driver's side mirror not being able

11:25:25 10 to function.

11:25:25 11 Q. Which -- just for the record, which she

11:25:28 12 are you referring to?

11:25:29 13 A. Officer McDermott. I'm sorry.

11:25:31 14 Q. That's okay.

11:25:33 15 And what kind of -- what was your

11:25:34 16 understanding of the lack of functionality in the

11:25:37 17 mirror at that time?

11:25:37 18 A. That she wasn't -- it was immobile.

11:25:40 19 It was not able to move -- to move it.

11:25:42 20 Q. So it --

11:25:43 21 A. It was damaged.

11:25:44 22 Q. To adjust the --

11:25:45 23 A. Correct. Because it's all electronic.

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11:25:47 1 Sorry. I didn't mean to cut you off.

11:25:49 2 Q. No. It's okay.

11:25:50 3 A. But, yeah, it was -- so she wasn't able  
11:25:51 4 to move it.

11:25:54 5 Q. Did you yourself ever check out the --  
11:25:57 6 the mirror and its ability to move after the  
11:26:00 7 collision?

11:26:00 8 A. No. No. Just looked at the mirror.  
11:26:03 9 Not -- I didn't try to move it or anything.

11:26:05 10 Q. You mentioned earlier that sometimes  
11:26:07 11 your vehicles go in for maintenance. Does the  
11:26:12 12 police department itself maintain the fleet?

11:26:15 13 A. Yes.

11:26:16 14 Q. And is this something -- you know,  
11:26:19 15 a broken mirror, would that be something that the  
11:26:22 16 fleet could repair?

11:26:22 17 A. Yes, I believe so.

11:26:23 18 Q. You wouldn't send that out to another  
11:26:26 19 shop?

11:26:26 20 MS. HUGGINS: Form.

11:26:27 21 THE WITNESS: That, I don't know. You know,  
11:26:29 22 I don't know what the -- the warranty or -- you  
11:26:32 23 know, I don't know any of the ins and outs of the

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11:26:33 1 garage, but most likely take care of it in house,  
11:26:37 2 if they can.

11:26:43 3 **BY MS. YONKERS:**

11:26:43 4 **Q.** And since January 1st, 2017, for  
11:26:45 5 a period, say, within a few months after that, did  
11:26:48 6 you ever see Officer McDermott's vehicle again?

11:26:53 7 **A.** That, I'm unsure of.

11:26:54 8 **Q.** Did you ever take note of the -- the  
11:26:57 9 mirror and its condition after January 1st of 2017?

11:27:02 10 **A.** I don't believe so.

11:27:04 11 **Q.** Did Officer McDermott ever tell you  
11:27:07 12 anything to the effect that: Hey, I got that  
11:27:09 13 mirror fixed?

11:27:10 14 **A.** No.

11:27:10 15 **Q.** What about Officer Velez?

11:27:13 16 **A.** No.

11:27:16 17 **Q.** Do you have any knowledge about the  
11:27:17 18 condition of that mirror today?

11:27:19 19 **A.** I do not, no.

11:27:35 20 **Q.** In determining to take Mr. Kistner up  
11:27:37 21 to ECMC, did you start filling out a 941 form?

11:27:43 22 **A.** I don't believe I did, no.

11:27:44 23 **Q.** Do you know who did, if anyone?

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11:27:49 1           **A.**     I believe it was Officer Velez.

11:27:52 2           **Q.**     Would she have started doing that right  
11:27:54 3 on the scene, or would it have been at the  
11:27:56 4 hospital, or does it depend?

11:27:58 5           **MS. HUGGINS:**   Form.

11:27:59 6           **THE WITNESS:**   It depends -- it depends on  
11:28:00 7 the officer. I don't know when she started.

11:28:03 8           **BY MS. YONKERS:**

11:28:03 9           **Q.**     What's your typical protocol when  
11:28:04 10 you're filling out a 941 form?

11:28:09 11           **MS. HUGGINS:**   Form.

11:28:09 12           **THE WITNESS:**   It depends on the situation.

11:28:10 13           **BY MS. YONKERS:**

11:28:10 14           **Q.**     Do you ever start filling it out on the  
11:28:12 15 scene itself?

11:28:12 16           **A.**     Sometimes, yes.

11:28:15 17           **Q.**     Would -- Mr. Kistner's situation would  
11:28:18 18 have been -- would that have been one where you  
11:28:20 19 would have expected the 941 form to start being  
11:28:23 20 filled out at the scene?

11:28:25 21           **MS. HUGGINS:**   Form.

11:28:30 22           **THE WITNESS:**   No. It would -- it would be  
11:28:32 23 that officer's discretion, so I couldn't say.

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11:28:34 1 **BY MS. YONKERS:**

11:28:34 2 **Q.** So I'd have to ask Officer Velez about  
11:28:41 3 that?

11:28:42 4 **A.** Yes.

11:28:42 5 **Q.** Okay. Who came up with the charge of  
11:28:44 6 criminal mischief? Was that something you decided?  
11:28:50 7 Lieutenant McHugh? Was it a group decision?

11:28:52 8 How did that come about?

11:28:54 9 **A.** I believe when I spoke with Lieutenant  
11:28:56 10 McHugh, he made -- he made that call.

11:28:58 11 **Q.** And at that time did he give you the  
11:28:59 12 name of the charge and the criminal law or penal  
11:29:03 13 law section to go along with it?

11:29:04 14 How did that come about?

11:29:06 15 **A.** No. I believe it was just something  
11:29:08 16 along the lines of: Okay. You know, discharge the  
11:29:10 17 criminal mischief and take him to get evaluated.

11:29:14 18 **Q.** At any time before your phone call with  
11:29:17 19 Lieutenant McHugh, did anyone else from the  
11:29:21 20 neighborhood come out?

11:29:26 21 **A.** I -- I don't know what time frame that  
11:29:28 22 they -- that they had come out, but I know that  
11:29:30 23 there was another male that had come out. But

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11:29:36 1 I believe he was the only -- only other person that  
11:29:38 2 had come out.

11:29:41 3 Q. And what was your understanding of who  
11:29:43 4 this male was?

11:29:45 5 A. A relative to Mr. Kistner. I can't  
11:29:48 6 remember exact.

11:29:49 7 Q. And how did you know he was a relative?

11:29:53 8 A. The individual that had come out, he  
11:30:00 9 was making statements that it was -- I think he  
11:30:03 10 said, that's my father. Or uncle. I think father.  
11:30:06 11 I can't remember. But the individual that had come  
11:30:09 12 out.

11:30:09 13 Q. So you didn't have to ask him; he told  
11:30:11 14 you?

11:30:11 15 A. He volunteered that information, yes.

11:30:16 16 Q. Other than -- and did you have  
11:30:18 17 a conversation with this individual?

11:30:21 18 A. Initially it was just to, you know,  
11:30:23 19 stay back, you know, over there, on the sidewalk.  
11:30:27 20 Just to not interfere with, you know, what was  
11:30:29 21 going on.

11:30:31 22 Q. Did he come over -- I'm sorry. Were  
11:30:34 23 you done with your answer?

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11:30:35 1 **A.** Yes.

11:30:35 2 **Q.** Okay. Did he come over while

11:30:38 3 Mr. Kistner was over by the Velez/McDermott

11:30:43 4 vehicle or was it after?

11:30:45 5 **MS. HUGGINS:** Form.

11:30:47 6 **THE WITNESS:** He came, I believe, while

11:30:50 7 Mr. Kistner was on the ground.

11:30:55 8 **BY MS. YONKERS:**

11:30:55 9 **Q.** And is that --

11:30:57 10 **A.** Or attempted to.

11:30:59 11 **Q.** And was that the point where you said,

11:31:00 12 sir, you know, you need to stay over on the

11:31:02 13 sidewalk, please; we're assessing and working here?

11:31:04 14 **A.** Correct.

11:31:04 15 **Q.** Okay.

11:31:05 16 **A.** Yes.

11:31:06 17 **Q.** Did you have any other interactions or

11:31:08 18 conversations with this particular individual after

11:31:09 19 that initial one?

11:31:10 20 **A.** I believe we -- he would not leave the

11:31:16 21 immediate area, so we, you know, had gotten his --

11:31:21 22 I believe his identification to ID him, and I believe

11:31:24 23 that was the extent of it, the interaction with

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11:31:29 1 him.

11:31:29 2 **Q.** Did you see him interacting with any of  
11:31:31 3 your other fellow officers?

11:31:35 4 **A.** I don't remember if he did or not.

11:31:36 5 **Q.** Did he ever go over to your vehicle  
11:31:39 6 where Mr. Kistner was now sitting?

11:31:42 7 **MS. HUGGINS:** Form.

11:31:48 8 **THE WITNESS:** I know that he was over there.  
11:31:50 9 I don't remember -- I can't remember if I had  
11:31:54 10 brought him over to get his ID or if he had -- you  
11:31:58 11 know, or if we had called him over and he walked  
11:32:00 12 over. I don't remember.

11:32:02 13 **BY MS. YONKERS:**

11:32:02 14 **Q.** At any time did you feel the need for  
11:32:05 15 an ambulance to be called for Mr. Kistner?

11:32:10 16 **A.** I know that -- I believe radio or  
11:32:13 17 dispatch had put it out, but no, an immediate  
11:32:17 18 ambulance to come out there, no.

11:32:19 19 **Q.** Why not?

11:32:21 20 **A.** Because assessing him, and we had made  
11:32:26 21 the determination that it would be quicker for us  
11:32:29 22 to assist him and take him for evaluation instead  
11:32:32 23 of waiting for an ambulance. That could take --

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11:32:36 1 only knows how long --

11:32:38 2 Q. Okay.

11:32:38 3 A. -- it would take for an ambulance to  
11:32:41 4 get there.

11:32:41 5 Q. Did the individual who came out ever  
11:32:43 6 indicate that he wanted to call an ambulance, in  
11:32:49 7 your presence?

11:32:49 8 A. He may have, but I can't remember.

11:32:51 9 Q. Do you remember anyone canceling  
11:32:55 10 ambulance requests at any point during that  
11:32:57 11 morning?

11:32:58 12 A. Yes.

11:32:58 13 MS. HUGGINS: Form.

11:32:58 14 BY MS. YONKERS:

11:32:59 15 Q. Who did the cancelation?

11:33:00 16 A. I believe it was me.

11:33:01 17 Q. Why did you do that?

11:33:02 18 A. Because it would have been a lot  
11:33:04 19 quicker for us to get him up to ECMC and get the  
11:33:07 20 treatment than waiting right there for an ambulance  
11:33:10 21 to show up.

11:33:11 22 Q. Did Mr. Kistner at all, during this  
11:33:13 23 morning period, request an ambulance?

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11:33:16 1           **A.**    I don't remember. I do know that we  
11:33:18 2    advised him that we were taking him up to ECMC to  
11:33:22 3    get treated. To, you know, get further treatment  
11:33:24 4    and evaluation from the medical professionals.

11:33:25 5           **Q.**    How did he respond to that information?

11:33:29 6           **A.**    Well, at this point, once he was in  
11:33:32 7    the -- the rear of our vehicle, that's just when it  
11:33:37 8    went south.

11:33:38 9           **Q.**    Okay. Let's get there in a minute.

11:33:41 10          Was there anyone else talking to any of the  
11:33:45 11   officers at the scene other than this male  
11:33:48 12   individual that you mentioned?

11:33:51 13          **A.**    I -- I don't believe so.

11:33:53 14          **Q.**    Was there a woman at all in a -- to  
11:33:56 15   your recollection, speaking to officers from an  
11:34:00 16   upstairs window?

11:34:01 17          **A.**    There was a woman there, but she was  
11:34:05 18   yelling to the other gentleman that was down there.  
11:34:09 19   I don't -- I don't recall if she was speaking to  
11:34:12 20   officers or not. I don't -- I don't know.

11:34:14 21          **Q.**    At any point did you speak to the --  
11:34:20 22   the male individual about what he had seen on  
11:34:23 23   the -- on the street that day?

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11:34:26 1 **A.** I don't remember.

11:34:27 2 **Q.** What about the -- the woman who was  
11:34:30 3 speaking to the individual? Did you ever ask her  
11:34:35 4 what she saw that day?

11:34:36 5 **A.** No, I don't believe so.

11:34:37 6 **Q.** Do you know if any of your other  
11:34:38 7 officers spoke to either the male individual or the  
11:34:41 8 woman about what they saw that day?

11:34:44 9 **MS. HUGGINS:** Form.

11:34:44 10 **THE WITNESS:** That, I don't know.

11:34:45 11 **BY MS. YONKERS:**

11:34:45 12 **Q.** Did anyone ever advise you at the scene  
11:34:47 13 that they had a video recording of what had  
11:34:51 14 happened?

11:34:59 15 **A.** I believe somebody made mention of  
11:35:00 16 a camera, but I can't remember who -- who had said  
11:35:06 17 it.

11:35:06 18 **Q.** Did you collect the video recording at  
11:35:08 19 that time before leaving?

11:35:08 20 **A.** No.

11:35:09 21 **Q.** Why not?

11:35:10 22 **A.** That's not part of patrol duties. And  
11:35:15 23 we had observed the incident through the mirror,

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11:35:18 1 like I said, from my vantage point, in its entirety.

11:35:33 2 Q. After your conversation with Lieutenant  
11:35:36 3 McHugh, did you tell Mr. Kistner that he was going  
11:35:39 4 to be charged?

11:35:46 5 A. I don't remember if I had told him  
11:35:51 6 there or, you know, if at all. I don't remember.

11:35:53 7 Q. Did you read him his rights?

11:35:59 8 A. I don't -- I don't believe I did.

11:36:02 9 Q. Did anyone else, in your presence, read  
11:36:04 10 him his rights?

11:36:07 11 A. That, I'm unsure of. I don't know if  
11:36:09 12 one of the other officers did or not.

11:36:11 13 Q. But you don't have a recollection,  
11:36:12 14 sitting here today, of doing so, correct?

11:36:14 15 A. Correct. I don't -- I don't believe  
11:36:16 16 I did.

11:36:16 17 Q. So do you then leave Schmarbeck; you  
11:36:21 18 have Mr. Kistner in your car?

11:36:22 19 A. Yes.

11:36:22 20 Q. And is Officer Moriarity driving again?

11:36:25 21 A. Yes, I believe so.

11:36:26 22 Q. And do you go straight from Schmarbeck  
11:36:29 23 to ECMC?

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11:36:29 1 **A.** Yes.

11:36:30 2 **Q.** About how long of a trip is that?

11:36:34 3 **A.** Five minutes maybe.

11:36:36 4 **Q.** And is it a situation where you have  
11:36:38 5 lights and sirens going, or are you just driving  
11:36:40 6 there?

11:36:42 7 **A.** No, I don't think we had lights and  
11:36:44 8 sirens. I think we were just -- we were getting  
11:36:48 9 there quickly but safely.

11:36:50 10 **Q.** And are Officers Velez and McDermott  
11:36:53 11 accompanying your car to ECMC?

11:36:55 12 **A.** Yes.

11:36:55 13 **MS. HUGGINS:** Form.

11:36:55 14 **BY MS. YONKERS:**

11:36:56 15 **Q.** And what do you do upon arrival at the  
11:36:58 16 ECMC campus?

11:37:01 17 **A.** We pull up the ramp to the ER entrance.  
11:37:04 18 We take Mr. Kistner out of our vehicle. We go in  
11:37:09 19 through the ER entrance. There's a separate  
11:37:15 20 entrance for, you know, the ambulance and police.

11:37:17 21 So we take him in there -- excuse me -- and  
11:37:21 22 we sit him down. There's usually like a chair off  
11:37:25 23 to the right where the admissions window is to the

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11:37:26 1 left.

11:37:26 2 Q. And at any time -- he's still

11:37:29 3 handcuffed at this time, correct?

11:37:30 4 A. Correct.

11:37:30 5 Q. Cuffed behind -- hands behind his back?

11:37:32 6 A. Yes.

11:37:32 7 Q. At any time from the time you -- he was

11:37:34 8 first handcuffed, to your arrival at ECMC, did he

11:37:38 9 make any complaints about his handcuffing?

11:37:44 10 A. That, I don't remember.

11:37:45 11 Q. If he did, would that have been

11:37:47 12 reported anywhere?

11:37:54 13 A. I don't believe so. Not for that --

11:37:58 14 this incident. I don't think there was any -- you

11:38:02 15 know, any reason.

11:38:03 16 Q. Excuse me. Are you advising Lieutenant

11:38:09 17 McHugh of your actions as things are going forward?

11:38:12 18 MS. HUGGINS: Form.

11:38:13 19 THE WITNESS: No. After I spoke with him on

11:38:15 20 the phone, we would just let dispatch know, you

11:38:19 21 know, we're going up to ECMC, and then, you know,

11:38:21 22 our actions from there. Like if we were leaving,

11:38:25 23 if we were going back on patrol. Whatever we, you

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11:38:28 1 know, were going to be doing.

11:38:29 2 **BY MS. YONKERS:**

11:38:30 3 **Q.** Okay. Do you remember what time you  
11:38:32 4 arrived at ECMC?

11:38:34 5 **A.** No, I do not.

11:38:38 6 **Q.** Do you know if it was still in the  
11:38:39 7 morning hours?

11:38:42 8 **A.** That, I'm unsure of.

11:38:43 9 **Q.** So what happens when you first arrive  
11:38:48 10 and after you get Mr. Kistner seated in a chair,  
11:38:50 11 what happens next?

11:38:52 12 **A.** Well, the intake, the admissions  
11:38:58 13 personnel attempted to get information from him  
11:39:00 14 just to -- to triage him and get him treatment, but  
11:39:05 15 at that time, Mr. Kistner was yelling, being  
11:39:11 16 belligerent, refusal to answer questions. Yeah.

11:39:20 17 **Q.** Let me back you up a little bit. You  
11:39:22 18 had mentioned earlier that in the -- as you got  
11:39:24 19 Mr. Kistner into your car, as you were leaving for  
11:39:26 20 ECMC, things went south. What do you mean by that?

11:39:30 21 **MS. HUGGINS:** Form.

11:39:30 22 **THE WITNESS:** At that point he -- his  
11:39:34 23 refusal to answer any questions, just trying to get

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11:39:38 1 information for the hospital, and then he continued  
11:39:43 2 to, you know, be belligerent, curse at officers,  
11:39:51 3 you know, call us names, and just completely  
11:39:51 4 uncooperative.

11:40:02 5 **BY MS. YONKERS:**

11:40:02 6 **Q.** For what period of time are we talking  
11:40:04 7 about in terms of him being belligerent and cursing  
11:40:08 8 at the hospital?

11:40:10 9 **MS. HUGGINS:** Form.

11:40:10 10 **THE WITNESS:** The -- the entire time that  
11:40:14 11 myself and Officer Moriarity were there at the  
11:40:16 12 intake, before we had left to go back on patrol.

11:40:19 13 **BY MS. YONKERS:**

11:40:20 14 **Q.** About how long of a period of time was  
11:40:21 15 that?

11:40:24 16 **A.** I don't know. Maybe 20 minutes, half  
11:40:26 17 an hour?

11:40:32 18 **Q.** Definitely less than an hour, fair to  
11:40:34 19 say?

11:40:34 20 **A.** I believe -- I believe so.

11:40:36 21 **Q.** And was Mr. Kistner cursing at all of  
11:40:38 22 the officers or just certain officers?

11:40:40 23 **A.** I believe it was all four of us.



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11:40:42 1 Q. What kind of things was he saying?

11:40:44 2 A. He was calling us the fucking Gestapo.

11:40:49 3 Calling us the stuff of -- we were Aryans. We were

11:40:58 4 there to take his rights away. We were communist.

11:41:02 5 You know, anything and everything, curse

11:41:05 6 words that, you know, you could imagine were

11:41:08 7 directed right at us.

11:41:11 8 Q. Did anyone have any further discussions

11:41:14 9 with him from the police at this point?

11:41:15 10 A. I don't believe so.

11:41:17 11 Q. So this was now on to the medical staff

11:41:20 12 to do their assessment?

11:41:20 13 A. Yes.

11:41:21 14 Q. But you're still present because he's

11:41:24 15 considered in custody now; is that right?

11:41:26 16 MS. HUGGINS: Form.

11:41:26 17 THE WITNESS: In custody and, you know,

11:41:34 18 belligerent. Just uncooperative right now. So we

11:41:36 19 just wanted to make sure that, you know, the other

11:41:39 20 officers were safe, that it was going to be okay.

11:41:42 21 BY MS. YONKERS:

11:41:42 22 Q. And so did there come a time where you

11:41:44 23 made a determination that the other officers were

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11:41:47 1 going to be okay and it was okay for you to leave?

11:41:49 2 **A.** Yes.

11:41:50 3 **Q.** And that was that 20 or 30 minutes  
11:41:52 4 later?

11:41:52 5 **A.** I believe so, yes.

11:41:55 6 **Q.** What else did you observe or hear or do  
11:41:59 7 during that 20- to 30-minute time period -- frame?

11:42:03 8 **MS. HUGGINS:** Form.

11:42:04 9 **THE WITNESS:** At that point it was just  
11:42:05 10 monitoring, you know, just staying there.

11:42:08 11 Nothing really we could do other than make  
11:42:10 12 sure he stayed seated, didn't move around, and that  
11:42:13 13 the medical personnel were able to do their job.

11:42:16 14 **BY MS. YONKERS:**

11:42:16 15 **Q.** And are you -- is he being moved from,  
11:42:21 16 you know, different chairs into different rooms,  
11:42:24 17 different areas during this time, or is he in one  
11:42:26 18 place?

11:42:27 19 **A.** I don't remember going to a different  
11:42:29 20 room. I don't. I just remember him being in the  
11:42:37 21 chair in the -- like the hallway, when you walk in.

11:42:39 22 **Q.** And this was in the admissions area you  
11:42:42 23 would call it? Triage area?

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12:28:56 1           **Q.**    The next entry says call type changed -  
12:29:00 2 accident/injury PRI: 2.

12:29:04 3           Do you see that?

12:29:05 4           **A.**    Yes.

12:29:05 5           **Q.**    Who made the decision to change that  
12:29:06 6 call type?

12:29:07 7           **MS. HUGGINS:**   Form.

12:29:08 8           **THE WITNESS:**  Initially, that was the  
12:29:09 9 dispatcher's.

12:29:10 10          **BY MS. YONKERS:**

12:29:10 11          **Q.**    Did that change at some point?

12:29:17 12          **A.**    From the accident/injury.

12:29:19 13          **Q.**    Or what -- what did it change from?

12:29:23 14          **A.**    From the criminal mischief to  
12:29:26 15 accident/injury.

12:29:29 16          **Q.**    I see.

12:29:31 17          Later on there's another entry, at 11:04:26.  
12:29:36 18 Again, is that ambulance notified?

12:29:38 19          **A.**    Yes.

12:29:41 20          **Q.**    At 11:07:31, there's an entry cameras  
12:29:46 21 on 37 has video of the man flopping on the ground.

12:29:50 22          Do you see that?

12:29:51 23          **A.**    Yes.

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12:29:51 1 Q. Who put that entry in?

12:29:53 2 A. That, I would say it's the dispatcher.

12:29:57 3 Q. At any time when you were on scene, did  
12:29:59 4 you ever see Mr. Kistner flopping on the ground?

12:30:02 5 A. I don't believe so.

12:30:05 6 Q. And the -- I think you pointed this out  
12:30:07 7 to me earlier, the 11:22:34 entry was the location  
12:30:12 8 changing to ECMC, correct?

12:30:13 9 A. Yes.

12:30:13 10 Q. And is that when you and Officer  
12:30:16 11 Moriarity and Officer McDermott and Officer Velez  
12:30:19 12 are transporting and going up to ECMC?

12:30:22 13 MS. HUGGINS: Form.

12:30:23 14 THE WITNESS: That's when we notified  
12:30:26 15 dispatch that we would be going up to ECMC.

12:30:28 16 BY MS. YONKERS:

12:30:28 17 Q. Okay. And then at 11:23:01, there's  
12:30:32 18 a C230 will be a 941.

12:30:34 19 Do you see that?

12:30:35 20 A. Yes.

12:30:35 21 Q. Does that mean that's something that  
12:30:37 22 you relayed as Charlie 230 to dispatch?

12:30:40 23 A. Yes.

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12:30:41 1 Q. What does the next entry mean,  
12:30:43 2 on scene - C230?

12:30:47 3 A. Dispatch is just putting us there  
12:30:49 4 on scene of this, the ambulance call, because  
12:30:55 5 they're combining the calls.

12:30:58 6 Q. And then the next entry, at 11:30:35,  
12:31:03 7 says, C230, suspect broke mirr on car 473  
12:31:08 8 intentionally.

12:31:08 9 Do you see --

12:31:09 10 A. Yes.

12:31:09 11 Q. -- that?

12:31:10 12 A. Yes.

12:31:10 13 Q. Mirr, I take it, is short for mirror?

12:31:13 14 A. Yes.

12:31:16 15 Q. Is this an entry that you yourself made  
12:31:18 16 or called in?

12:31:19 17 A. I called in. I did not put it in.

12:31:21 18 Q. What was the nature of your belief that  
12:31:23 19 Mr. Kistner broke the mirror intentionally?

12:31:25 20 A. Just from, like I had said earlier,  
12:31:27 21 just my vantage point, his location, and the  
12:31:33 22 vehicle's location. How, you know, I had seen the  
12:31:36 23 vehicle abruptly stop, and his arm was outstretched

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12:31:39 1 to the vehicle.

12:31:41 2 **Q.** Had you ever seen anyone, before  
12:31:44 3 January 1st of 2017, stretch their arm out because  
12:31:47 4 they're about to get hit?

12:31:49 5 **MS. HUGGINS:** Form.

12:31:53 6 **THE WITNESS:** Not that I can recall, no.

12:31:55 7 **BY MS. YONKERS:**

12:31:55 8 **Q.** Do you ever watch football? Do you  
12:31:57 9 watch the NFL at all?

12:31:58 10 **A.** Yes.

12:31:59 11 **Q.** Did you ever see anyone putting their  
12:32:00 12 hands out before they get hit?

12:32:02 13 **A.** Yes.

12:32:05 14 **Q.** At 13:14:01, there's an entry that says  
12:32:09 15 set to primary - C241.

12:32:13 16 What does that mean?

12:32:16 17 **A.** That C241 is now the primary officer  
12:32:20 18 going forward on this call.

12:32:23 19 **Q.** Let's see. Is there any entry on  
12:32:26 20 Exhibit 4 identifying yourself and Officer Moriarity  
12:32:38 21 leaving ECMC?

12:32:40 22 **A.** I don't believe so.

12:32:42 23 **Q.** The entry at 14:45:35 says, C241 NMT.

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12:32:49 1 Do you see that entry?

12:32:50 2 **A.** Yes.

12:32:50 3 **Q.** What does NMT mean?

12:32:53 4 **A.** That they need more time.

12:32:59 5 **Q.** What does that mean from a -- a police  
12:33:01 6 and dispatch standpoint?

12:33:03 7 **A.** Just letting the dispatch -- the  
12:33:05 8 dispatcher know that we're still on this call, so  
12:33:09 9 don't preempt us from it. We're going to need more  
12:33:12 10 time on this particular call.

12:33:13 11 **Q.** Do you know, at this point, whether you  
12:33:16 12 were still at ECMC or not?

12:33:17 13 **A.** I don't -- I don't recall, but I don't  
12:33:21 14 believe so.

12:33:21 15 **Q.** Toward the end there's an entry  
12:33:26 16 16:41:01, and it starts off with an HD01, colon.

12:33:31 17 Do you see that?

12:33:32 18 **A.** Yes.

12:33:32 19 **Q.** What does HD01 mean?

12:33:34 20 **A.** That's the dispatcher, so kind of like  
12:33:39 21 a messaging system in the -- in the vehicles. So  
12:33:42 22 HD01 -- you would put in HD01 and you would send  
12:33:46 23 them a message.

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12:33:47 1 Q. So this message in this line is coming  
12:33:49 2 from Officer Velez or Officer McDermott at this  
12:33:53 3 point?

12:33:55 4 MS. HUGGINS: Form.

12:33:56 5 THE WITNESS: That, I don't know.

12:33:57 6 BY MS. YONKERS:

12:33:57 7 Q. Who would have been the officers who  
12:34:00 8 would have put in a request like this HD01 that  
12:34:06 9 we're looking at in Exhibit 4?

12:34:08 10 MS. HUGGINS: Form.

12:34:09 11 BY MS. YONKERS:

12:34:11 12 Q. Based on this call.

12:34:11 13 A. It would -- yeah, it would either be  
12:34:14 14 Officer Velez or McDermott.

12:34:17 15 Q. Do you have any knowledge why one of  
12:34:20 16 them made the request to change the call to  
12:34:24 17 criminal mischief?

12:34:32 18 A. Where -- where is that one?

12:34:34 19 Oh, down there --

12:34:34 20 Q. Yeah.

12:34:35 21 A. -- to criminal mischief?

12:34:37 22 Q. Yep.

12:34:38 23 A. Due to the damage to the police

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12:39:47 1 A. No.

12:39:48 2 Q. Right next to that there's a category  
12:39:50 3 that says arrest type, and under it it says crime  
12:39:54 4 in progress.

12:39:55 5 Do you see that?

12:39:55 6 A. Yes.

12:39:56 7 Q. What does that mean?

12:40:02 8 A. That just means that it was -- it was  
12:40:04 9 happening. It was, you know, physically happening  
12:40:06 10 at that time.

12:40:07 11 Q. What other types of arrest types are  
12:40:10 12 available to put in a form like this?

12:40:12 13 A. I believe you could use, you know,  
12:40:15 14 warrant -- I'm not sure what all the options are.

12:40:20 15 Q. Would this be something that you would  
12:40:22 16 have a pull-down menu to use, or is this something  
12:40:25 17 that's typed in? Do you know?

12:40:26 18 A. No. I believe this portion is put in  
12:40:28 19 minus the -- the law -- the law category. I don't  
12:40:33 20 believe that's put in by -- by us as officers.

12:40:36 21 Q. Okay. In the narrative section at the  
12:40:39 22 bottom of the page, there's an entry, the last  
12:40:43 23 sentence, talking about Mr. Kistner using obscene

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12:40:48 1 and offensive language toward officers and medical  
12:40:51 2 staff.

12:40:52 3 Do you remember which medical staff he used  
12:40:56 4 obscene and offensive language toward?

12:40:59 5 A. When I was there it was the intake and  
12:41:02 6 triage personnel.

12:41:03 7 Q. How many people in total are we talking  
12:41:05 8 about? Do you know?

12:41:08 9 A. Three to five.

12:41:12 10 Q. And do you know what their titles were?

12:41:16 11 A. No, I don't know.

12:41:17 12 Q. Were -- were any of them doctors?

12:41:18 13 A. That, I don't know.

12:41:21 14 Q. In this area of ECMC, do the doctors  
12:41:24 15 and nurses dress in different scrub types? Do you  
12:41:28 16 know?

12:41:28 17 A. Yeah. It's not like a one uniform.  
12:41:31 18 It's, I guess, whatever their preference is.

12:41:36 19 Q. And do you know what it means when the  
12:41:38 20 report says that causing an annoyance and alarm?  
12:41:44 21 Do you know what that means?

12:41:48 22 A. So just like to the medical personnel,  
12:41:52 23 an annoyance. It was disrupting their -- you know,

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12:41:56 1 their work, what they -- what they were trying to  
12:41:58 2 accomplish.

12:41:58 3 And alarm, it was making them nervous, you  
12:42:03 4 know, scared, just as a generality.

12:42:06 5 **Q.** The -- let's see.

12:42:12 6 Do you know how it was assessed that the  
12:42:17 7 driver's side window and mirror damage exceeded  
12:42:22 8 \$250, as listed in the narrative section?

12:42:25 9 **MS. HUGGINS:** Form.

12:42:26 10 **THE WITNESS:** An estimation.

12:42:28 11 **BY MS. YONKERS:**

12:42:28 12 **Q.** Who made that estimation?

12:42:30 13 **A.** I'm not sure who made that.

12:42:35 14 **Q.** Would it have been something you spoke  
12:42:37 15 to Lieutenant McHugh about?

12:42:41 16 **A.** It -- yeah, it could have been.

12:42:44 17 **Q.** Did you talk with any of the other  
12:42:46 18 officers at the scene about the amount of damage  
12:42:49 19 while you were there?

12:42:50 20 **A.** I don't know if it was on the scene or,  
12:42:54 21 you know, at the hospital, and I'm not sure if we  
12:42:57 22 did or not.

12:42:58 23 **Q.** But you -- do you recall yourself ever

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12:43:00 1 making an assessment of the amount of damage?

12:43:03 2 **A.** I may have, but I don't know.

12:43:05 3 **Q.** How would you have determined that the  
12:43:07 4 amount exceeded \$250?

12:43:10 5 **MS. HUGGINS:** Form.

12:43:11 6 **THE WITNESS:** That, I'm unsure of.

12:43:12 7 **BY MS. YONKERS:**

12:43:13 8 **Q.** Would you ever call the garage and say,  
12:43:14 9 hey, how much does it cost to fix a mirror?

12:43:17 10 **MS. HUGGINS:** Form.

12:43:17 11 **BY MS. YONKERS:**

12:43:18 12 **Q.** Anything like that?

12:43:19 13 **A.** Somebody could have, you know. I didn't.

12:43:22 14 **Q.** And no one did in your presence?

12:43:25 15 **A.** No.

12:43:36 16 **MS. YONKERS:** This I might have another copy  
12:43:38 17 of.

12:43:48 18 Officer Schultz, I'm going to have you look  
12:43:52 19 at Exhibit 6. Take a look at it, and let me know  
12:43:55 20 if you've ever seen that -- this particular form,  
12:43:57 21 as it was completed, please.

12:44:01 22 **MS. HUGGINS:** Form. Asked and answered.

12:44:02 23 **THE WITNESS:** Yes.

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12:44:03 1 **BY MS. YONKERS:**

12:44:03 2 **Q.** You have seen this?

12:44:04 3 **A.** Briefly, yes.

12:44:05 4 **Q.** When did you see this document?

12:44:13 5 **A.** I'm not sure if it was the day of, but  
12:44:15 6 it was yesterday.

12:44:16 7 **Q.** And when you say day of, the day of the  
12:44:18 8 incident?

12:44:18 9 **A.** The incident, correct.

12:44:19 10 **Q.** Are you familiar with Officer Velez's  
12:44:25 11 handwriting?

12:44:25 12 **A.** I am not.

12:44:27 13 **Q.** Nonetheless, is it typical for the  
12:44:29 14 person who signs the form at the bottom to complete  
12:44:32 15 the form?

12:44:33 16 **A.** Yes.

12:44:34 17 **Q.** Is any of your handwriting, sir,  
12:44:36 18 anywhere on Exhibit 6?

12:44:42 19 **A.** No, it is not.

12:44:43 20 **Q.** Did Officer Velez obtain any  
12:44:48 21 information from you in completing this form?

12:44:50 22 **A.** I don't believe so.

12:44:54 23 **Q.** Were you present when she was filling

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12:44:56 1 it out?

12:44:59 2 A. That, I'm unsure of.

12:45:04 3 Q. Have you ever discussed the content of  
12:45:05 4 this form with Officer Velez?

12:45:07 5 A. I don't believe so, no.

12:45:09 6 Q. What about with Officer McDermott?

12:45:11 7 A. No.

12:45:11 8 Q. What about Officer Moriarity?

12:45:15 9 A. No.

12:45:56 10 Q. Officer Schultz, you've been handed

12:45:58 11 what we've marked as Exhibit 7. Can you take

12:46:00 12 a look at that document, sir, and let me know when  
12:46:03 13 you're done?

12:46:13 14 A. Okay. I'm done.

12:46:14 15 Q. Do you recognize the content of Exhibit  
12:46:18 16 7?

12:46:18 17 A. Yes.

12:46:19 18 Q. What do you recognize it as?

12:46:21 19 A. This is my daily log sheet from the  
12:46:24 20 date in question.

12:46:26 21 Q. And is this a document you've seen  
12:46:27 22 before?

12:46:32 23 A. I'm not sure if I've seen this one,

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13:09:40 1 **BY MS. YONKERS:**

13:10:01 2 **Q.** And that was through a time of  
13:10:03 3 23 seconds.

13:10:05 4 Other than the dispatcher responding, is  
13:10:07 5 that still all your voice?

13:10:08 6 **A.** Yes.

13:10:11 7 **Q.** And is that, at 23 seconds, the point  
13:10:13 8 where you were canceling ambulance calls, like we  
13:10:16 9 discussed earlier?

13:10:16 10 **THE WITNESS:** Yes.

13:10:33 11 (Audio clip played.)

13:10:33 12 **BY MS. YONKERS:**

13:10:34 13 **Q.** And that was the time period 23 seconds  
13:10:36 14 to 38 seconds that I just played. In that  
13:10:39 15 particular dialogue, you talked about your  
13:10:44 16 observations from the car that you were in at the  
13:10:47 17 time, correct?

13:10:47 18 **THE WITNESS:** Correct.

13:10:47 19 (Audio clip played.)

13:11:10 20 **BY MS. YONKERS:**

13:11:10 21 **Q.** At a time between 35 and 38 seconds,  
13:11:13 22 you indicated there that Mr. Kistner threw himself  
13:11:15 23 at a car that was parked.

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**Schultz - Yonkers - 2/13/20**

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13:11:16 1 **A.** Correct.

13:11:18 2 **Q.** Was it -- is it your recollection, upon  
13:11:21 3 hearing this, that the Velez and McDermott vehicle  
13:11:24 4 was actually in park, or do you mean by that that  
13:11:27 5 it was stopped?

13:11:29 6 **MS. HUGGINS:** Form.

13:11:29 7 **THE WITNESS:** By that, it was stopped.

13:11:31 8 **BY MS. YONKERS:**

13:11:32 9 **Q.** So --

13:11:32 10 **A.** I don't know if she had it in park or  
13:11:35 11 not, but it was stopped.

13:11:36 12 **Q.** So when you say parked on this audio  
13:11:39 13 clip of Exhibit 10, you actually don't mean parked,  
13:11:43 14 you mean stopped, correct?

13:11:43 15 **THE WITNESS:** Correct.

13:11:43 16 (Audio clip played.)

13:12:00 17 **BY MS. YONKERS:**

13:12:00 18 **Q.** That was at a time up through 48 seconds.  
13:12:02 19 What did you mean that Mr. Kistner was going to go  
13:12:04 20 down for fraud?

13:12:05 21 **A.** At the time, I was thinking of the  
13:12:08 22 charge of insurance fraud, but like I said, at that  
13:12:13 23 time, we were still assessing the situation.

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13:12:15 1           **Q.**     What would have happened if you had  
13:12:19 2 finished your assessment and came to the conclusion  
13:12:22 3 that this was an attempted insurance fraud? What  
13:12:25 4 would have happened?

13:12:25 5           **MS. HUGGINS:**   Form.

13:12:26 6           **THE WITNESS:**   Then we most likely would have  
13:12:29 7 charged the attempted insurance fraud.

13:12:33 8           **BY MS. YONKERS:**

13:12:33 9           **Q.**     Sitting here, off the top of your head,  
13:12:35 10 do you know what part of the penal law or criminal  
13:12:37 11 law that would fall under?

13:12:39 12           **A.**     No. I would have to -- to look in the  
13:12:41 13 penal law book.

13:12:42 14           **Q.**     Is that something that you would ask  
13:12:44 15 Lieutenant McHugh about before doing the charge  
13:12:46 16 because he's the lieutenant, or would you be able  
13:12:48 17 to do that yourself as the officer?

13:12:50 18           **MS. HUGGINS:**   Form.

13:12:54 19           **THE WITNESS:**   I believe I had spoke with him  
13:12:56 20 and just, you know, asked for clarification as to  
13:13:00 21 what the proper charge would be, and we came to the  
13:13:04 22 conclusion that the criminal mischief would be the  
13:13:08 23 better charge.

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13:13:08 1 **BY MS. YONKERS:**

13:13:08 2 **Q.** Compared to fraud?

13:13:09 3 **A.** Compared to fraud, yes.

13:13:10 4 **Q.** And is this audio clip one of the ones  
13:13:13 5 that you reviewed to get ready for your testimony  
13:13:15 6 here today?

13:13:16 7 **A.** Yes.

13:13:17 8 **MS. YONKERS:** We'll just finish this clip.  
13:13:17 9 (Audio clip played.)

13:13:17 10 **BY MS. YONKERS:**

13:13:33 11 **Q.** And from time 48 to time 1:02 there  
13:13:36 12 that we just heard, that was you, again, advising  
13:13:39 13 dispatch to disregard the ambulance call, correct?

13:13:41 14 **A.** Yes.

13:13:41 15 **MS. HUGGINS:** Form.

13:13:48 16 **MS. YONKERS:** I'm now going to play a clip  
13:13:50 17 that's labeled 010117 04.

13:13:50 18 (Audio clip played.)

13:13:50 19 **BY MS. YONKERS:**

13:14:03 20 **Q.** And, again, this was at the one-second  
13:14:06 21 mark of clip number 4. Is it still your voice --

13:14:09 22 **A.** Yes.

13:14:09 23 **Q.** -- on the radio?

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13:14:10 1 Is this another clip that you reviewed to  
13:14:12 2 get ready for your testimony?

13:14:14 3 **MS. HUGGINS:** He might be able to answer  
13:14:15 4 that better after he's heard the whole clip.

13:14:17 5 **MS. YONKERS:** Okay. Would it help you, sir,  
13:14:19 6 to play the whole clip to know?

13:14:20 7 **THE WITNESS:** Yes, please.

13:14:33 8 (Audio clip played.)

13:14:33 9 **BY MS. YONKERS:**

13:14:34 10 **Q.** That's through a time stamp of  
13:14:36 11 15 seconds. Is that still your voice?

13:14:38 12 **A.** Yes.

13:14:38 13 **Q.** Now can you identify this, whether or  
13:14:41 14 not you reviewed it to get ready for your testimony?

13:14:43 15 **A.** Yes, I did.

13:14:45 16 **Q.** Did I hear you correctly, sir, in that  
13:14:47 17 clip, did you say the four cars are going up to  
13:14:50 18 ECMC?

13:14:52 19 **A.** Yes. The four sector cars.

13:14:54 20 **Q.** What do you mean by that?

13:14:56 21 **A.** Officer McDermott and Velez. They  
13:15:01 22 were -- they were in the fourth sector, so the four  
13:15:03 23 sector cars were coming with me to ECMC.

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13:15:05 1 Q. I see. Okay.

13:15:06 2 And by 941 in this clip, you meant you were  
13:15:12 3 taking him up for a mental hygiene law examination,  
13:15:16 4 correct?

13:15:16 5 A. Mental health, yes.

13:15:19 6 Q. What did I say? Mental hygiene?

13:15:20 7 **THE WITNESS:** Hygiene, yes.

13:15:20 8 (Audio clip played.)

13:15:29 9 **BY MS. YONKERS:**

13:15:29 10 Q. And at this point, at around the  
13:15:33 11 20-second mark of this clip, the dispatcher is  
13:15:35 12 giving the time of 11:22. Is that when you're  
13:15:38 13 actually in the car en route or about to go?  
13:15:41 14 Do you know?

13:15:41 15 A. No, I don't. I don't remember.

13:15:46 16 Q. I'm also going to play a clip that's  
13:15:48 17 labeled as 05 from the same audio CD. Okay?

13:15:52 18 A. Okay.

13:15:55 19 **MS. HUGGINS:** The last two numbers?

13:15:56 20 **MS. YONKERS:** Yes, correct.

13:16:07 21 (Audio clip played.)

13:16:07 22 **BY MS. YONKERS:**

13:16:08 23 Q. And, again, in this very short part, up

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13:36:12 1 Moriarity was having with the covering officers?

13:36:15 2 A. I may have. I'm not sure.

13:36:17 3 Q. Do you -- did you have any conversation  
13:36:21 4 with them from your vehicle at that time?

13:36:23 5 A. I don't -- I don't believe so.

13:36:31 6 MS. YONKERS: I'm going to put up, from  
13:36:34 7 Exhibit 11, the third clip, which is 2017 0101102529.

13:36:53 8 (Video clip played.)

13:36:53 9 BY MS. YONKERS:

13:36:53 10 Q. And is this the point where Mr. Kistner  
13:36:55 11 has come out to the -- to the street?

13:36:57 12 A. I believe so, yes.

13:36:58 13 Q. Do you know what happened with the  
13:37:01 14 individual who was on the sidewalk by this point  
13:37:04 15 in time, which is time stamped 10:25:32?

13:37:08 16 A. No, I do not know.

13:37:09 17 Q. Do you know whether he was advised  
13:37:11 18 to -- you know, what next steps he could take?

13:37:17 19 Because that's the next step in the process  
13:37:19 20 on an advised call, correct?

13:37:20 21 MS. HUGGINS: Form.

13:37:21 22 THE WITNESS: Yes.

13:37:22 23 BY MS. YONKERS:

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13:37:22 1           **Q.**    Do you have any idea what those next  
13:37:24 2 steps he was advised to take were?

13:37:25 3           **A.**    No.    I don't remember.

13:37:27 4           **Q.**    Do you remember Mr. Kistner approaching  
13:37:29 5 your car, as shown in the third clip of Exhibit 11?

13:37:35 6           **A.**    Yes.

13:37:35 7           **Q.**    And does the third clip shown in  
13:37:40 8 Exhibit 11 fairly and accurately show the  
13:37:42 9 conditions of the street at that time?

13:37:44 10          **A.**    Yes.

13:37:45 11          **Q.**    Does the clip number 3 fairly and  
13:37:49 12 accurately show the positioning of the vehicles as  
13:37:52 13 shown at 10:25:32?

13:37:55 14          **MS. HUGGINS:**   Form.

13:37:56 15          **THE WITNESS:**   Yes.

13:37:56 16          **MS. HUGGINS:**   I would just object to the --  
13:37:58 17 there's been no testimony about the time stamp on  
13:38:00 18 the top being accurate or where that comes from.

13:38:06 19          **MS. YONKERS:**   Are you done?

13:38:08 20                   Your objection is noted.   Are you done?

13:38:10 21          **MS. HUGGINS:**   Yes.

13:38:10 22          **MS. YONKERS:**   I just want to continue with  
13:38:11 23 my questioning.

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13:38:13 1 And then Officer Moriarity drives past

13:38:18 2 Mr. Kistner, correct?

13:38:18 3 **THE WITNESS:** Correct.

13:38:20 4 **BY MS. YONKERS:**

13:38:20 5 **Q.** Did you or he have any verbal  
13:38:23 6 communication with Mr. Kistner, as you're watching  
13:38:26 7 this video?

13:38:27 8 **A.** Yes.

13:38:27 9 **Q.** What did you -- what verbal  
13:38:30 10 communication did you have?

13:38:31 11 **A.** It was very brief and something to the  
13:38:33 12 effect of: We've got to go.

13:38:35 13 Something along those lines.

13:38:37 14 **Q.** And as you're driving away, what speed  
13:38:40 15 did Officer Moriarity get up to?

13:38:44 16 **A.** That, I don't know.

13:38:45 17 **Q.** What's the speed limit on Schmarbeck?

13:38:47 18 **A.** 30 miles an hour.

13:38:51 19 **Q.** And as -- as you're driving away, are  
13:38:56 20 you looking in the mirror as -- the driver's side  
13:39:01 21 mirror, as you're driving away, or does it take  
13:39:03 22 a little bit before you look back?

13:39:05 23 **A.** No. Once Mr. Kistner walked -- once we

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13:39:08 1 had went past him --

13:39:09 2 Q. Yes.

13:39:09 3 A. -- and he was behind our vehicle, I was  
13:39:11 4 looking in the driver's side mirror the entire  
13:39:14 5 time. And I told Officer Moriarity to stop, as  
13:39:20 6 something to the effect of: I want to make sure  
13:39:21 7 nothing happens.

13:39:22 8 Q. Okay. Now, right around time stamp 7,  
13:39:30 9 8 -- I'm going to back it up a little bit.

13:39:33 10 So at time stamp 6, you're past Mr. Kistner,  
13:39:40 11 and he's walking toward the covering officers'  
13:39:44 12 vehicle, correct?

13:39:45 13 A. Correct.

13:39:52 14 Q. And we just played up through time stamp  
13:39:54 15 8 seconds, and did you see, at any point,  
13:39:57 16 Mr. Kistner put his arm out during that clip?

13:40:01 17 A. Yes.

13:40:01 18 Q. Did you see him throw himself on the  
13:40:04 19 vehicle?

13:40:06 20 A. No, not on the vehicle.

13:40:08 21 Q. Did you see him throw himself at the  
13:40:12 22 vehicle?

13:40:13 23 A. No.

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13:40:19 1           **Q.**     And it looks like the car just stopped  
13:40:21 2     at 11 seconds.

13:40:23 3           Looking at this clip, is it fair to say that  
13:40:26 4     the vehicle was still in motion, it had not stopped  
13:40:28 5     before it came into contact with Mr. Kistner,  
13:40:30 6     correct?

13:40:31 7           **MS. HUGGINS:**   Form.

13:40:32 8           **THE WITNESS:**   No.   From my vantage point,  
13:40:34 9     they were stopped when the contact was made between  
13:40:39 10    Mr. Kistner and the vehicle, and then it looks like  
13:40:43 11    it went forward again.

13:40:45 12          **BY MS. YONKERS:**

13:40:46 13          **Q.**     Okay.   Just to make sure I'm clear for  
13:40:49 14    the record, I understand what your recollection was  
13:40:52 15    and what your vantage point was.

13:40:54 16          Watching this video here today, did that  
13:40:57 17    police vehicle stop before Mr. Kistner and it came  
13:41:02 18    into contact?

13:41:04 19          **MS. HUGGINS:**   Form.

13:41:04 20          **THE WITNESS:**   It stopped abruptly and then  
13:41:08 21    went forward.

13:41:10 22          **BY MS. YONKERS:**

13:41:10 23          **Q.**     Let's take it back to the time stamp of

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13:41:19 1 6 seconds, and I'll play it forward until about 14,  
13:41:23 2 15, just straight through.

13:41:24 3 If you can, by looking at the video, tell me  
13:41:28 4 at what time stamp the covering officer vehicle  
13:41:31 5 stops abruptly, what time stamp Mr. Kistner is in  
13:41:38 6 contact with the vehicle, and what time the vehicle  
13:41:43 7 stops again. Okay?

13:41:44 8 **A.** All right.

13:41:45 9 **MS. HUGGINS:** Form.

13:41:50 10 **BY MS. YONKERS:**

13:41:50 11 **Q.** We may have to play that again. Sorry.

13:41:52 12 **A.** Yeah. I can't tell.

13:41:54 13 **Q.** I'll back it up further. It's not  
13:41:56 14 cooperating.

13:42:02 15 **A.** I can't tell -- I can't look at both  
13:42:04 16 the -- the numbers and --

13:42:08 17 **Q.** Is there a point in time, though, where  
13:42:10 18 you see that the car stops, starts again, and stops  
13:42:13 19 again?

13:42:13 20 **A.** From this camera view, no.

13:42:18 21 **Q.** Does this camera view show the vantage  
13:42:20 22 point that you had from your car?

13:42:22 23 **A.** No.

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13:42:23 1 Q. You would have been looking from the  
13:42:24 2 street view.

13:42:26 3 A. Correct.

13:42:26 4 Q. You would have been lower to the  
13:42:28 5 ground, correct?

13:42:28 6 A. Yes.

13:42:29 7 Q. Was there anything impeding your view  
13:42:31 8 in terms of sunlight? Cloud cover? Obstructions?

13:42:37 9 A. No.

13:42:41 10 Q. There's an individual who's walked down  
13:42:43 11 the street at about time stamp 16. Is that the  
13:42:46 12 individual that you spoke with and about earlier in  
13:42:56 13 your testimony?

13:42:57 14 A. Yes.

13:42:58 15 Q. The person who just got out of the  
13:43:01 16 covering officers' car on the passenger side, do  
13:43:03 17 you know which officer that is?

13:43:05 18 A. That's Officer Velez.

13:43:09 19 Q. And the -- to the right-hand side of  
13:43:11 20 this clip, there's an officer coming into view.  
13:43:16 21 Is that you or Officer Moriarity, can you tell?

13:43:18 22 A. I believe that's me.

13:43:23 23 Q. Now there's two officers. Are you

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13:43:26 1 shown in the time stamp 27 time frame?

13:43:29 2 **A.** Yes.

13:43:30 3 **Q.** And are you closer to the middle of the  
13:43:33 4 street or to the side of the street?

13:43:34 5 **A.** The middle of the street.

13:43:39 6 **Q.** And it appears that Officer Velez is  
13:43:43 7 saying something. Do you remember, sitting here  
13:43:47 8 today, what she said?

13:43:48 9 **A.** No, I don't.

13:43:54 10 **Q.** And at that point, did you just walk  
13:43:57 11 past the individual male who had come out from the  
13:44:00 12 sidewalk area?

13:44:00 13 **A.** Yes.

13:44:01 14 **Q.** Did you say anything to him at that  
13:44:03 15 time?

13:44:03 16 **A.** At that time, I'm not sure.

13:44:04 17 **Q.** Did he say anything to you at that  
13:44:07 18 time?

13:44:07 19 **A.** I -- I can't remember if he did or  
13:44:10 20 didn't.

13:44:10 21 **Q.** Was he interfering in any of your  
13:44:15 22 assessment at this point in time?

13:44:16 23 **A.** At this point, no.

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14:35:54 1 you know, the electronic database of the Buffalo  
14:35:59 2 Police Department?

14:36:00 3 **MS. HUGGINS:** Form.

14:36:00 4 **THE WITNESS:** That, I'm unsure of. That,  
14:36:02 5 I don't know.

14:36:10 6 **BY MS. YONKERS:**

14:36:11 7 **Q.** Your attorney asked you some questions  
14:36:12 8 about assignments to other units, like AIU and  
14:36:17 9 internal affairs.

14:36:18 10 Have you ever been assigned to any other  
14:36:19 11 units within the Buffalo Police Department?

14:36:21 12 **A.** No.

14:36:22 13 **MS. YONKERS:** That's all I have. Thank you.

14:36:25 14 **THE WITNESS:** Thank you.

15 (Proceedings of 2/13/20 were then concluded  
16 at 2:35 p.m.)

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18 \* \* \*

19

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1 I hereby CERTIFY that I have read the  
2 foregoing 280 pages, and that except as to those  
3 changes (if any) as set forth in an attached errata  
4 sheet, they are a true and accurate transcript of  
5 the testimony given by me in the above entitled  
6 action on February 13, 2020.

7  
8  
9 -----  
10 KARL SCHULTZ  
11  
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1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE )

4

5 I DO HEREBY CERTIFY as a Notary Public in and  
6 for the State of New York, that I did attend and  
7 report the foregoing deposition, which was taken  
8 down by me in a verbatim manner by means of machine  
9 shorthand. Further, that the deposition was then  
10 reduced to writing in my presence and under my  
11 direction. That the deposition was taken to be  
12 used in the foregoing entitled action. That the  
13 said deponent, before examination, was duly sworn  
14 to testify to the truth, the whole truth and  
15 nothing but the truth, relative to said action.

16

17

18

19 -----  
ANNE T. BARONE, RPR,  
20 Notary Public.

21

22

23

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